DOCUMENT RESUME

ED 079 530 VT 020 725

AUTHOR Miller, Herbert S.
TITLE The Closed Door: The Effect of a Criminal Record on Employment with State and Local Public Agencies.
INSTITUTION Georgetown Univ. Law Center, Washington, D.C. Inst. of Criminal Law and Procedure.
SPONS AGENCY Manpower Administration (DOL), Washington, D.C. Office of Research and Development.
REPORT NO DLMA-81-09-70-02
PUB DATE Feb 72
NOTE 263p.
AVAILABLE FROM National Technical Information Service, Springfield, VA 22151

EDRS PRICE MF-$0.65 HC-$9.87
DESCRIPTORS *Administrative Policy; Confidential Records; Court Litigation; *Criminals; Delinquent Rehabilitation; *Employment; *Employment Opportunities; *Employment Problems; Employment Qualifications; Federal Government; Legal Problems; State Government; Vocational Rehabilitation
IDENTIFIERS Civil Service; *Criminal Records

ABSTRACT

This study documents the inconsistencies and inner dynamics of the administrative structure of the legal system as it operates on persons with criminal records in their attempt to find employment. Directed particularly to the administrative structure at the local, state, and national level, the investigation utilized questionnaire responses and job application data from 48 states to obtain its findings. Those major findings include: (1) A juvenile record and an arrest record not followed by conviction are substantial obstacles to employment, (2) Present annullment and expunging statutes do not remove the employment obstacles of convicted felons, (3) State civil service statutes provide no guidelines for civil service personnel to screen applicants with criminal records, (4) Job application forms frequently ask for arrest records, but do not indicate that an individual with a criminal record is eligible for hiring, (5) Civil service procedures generally act as a bar to employment for convicted persons through the setting of high educational requirements, etc., and (8) Juvenile and adult correctional officials do not inform their wards and clients of their legal status and ways to mitigate the effect of the record on job opportunities. (Author/SN)

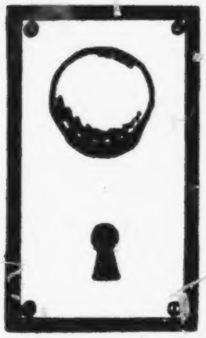
FILMED FROM BEST AVAILABLE COPY

ED 079530

THE CLOSED DOOR

The Effect of a Criminal Record on Employment with State and Local Public Agencies

Herbert S. Miller



This report was prepared for the Manpower Administration, U.S. Department of Labor, under research contract No. 81-09-70-02 authorized by Title I of the Manpower Development and Training Act. Since contractors performing research under Government sponsorship are encouraged to express their own judgment freely, the report does not necessarily represent the Department's official opinion or policy. Moreover, the contractor is solely responsible for the factual accuracy of all material developed in the report.

FINAL PROJECT REPORT
MA CONTRACT NO. 81-09-70-02

UT 020 725

STANDARD TITLE PAGE FOR TECHNICAL REPORTS

1. Report No. DLMA 81-09-70-02

[redacted]

3. Recipient's Catalog No.

4. Title and Subtitle

THE CLOSED DOOR
The Effect of a Criminal Record on Employment
with State and Local Public Agencies

5. Report Date
February, 1972

6. Performing Organization Code

7. Author(s)
Herbert S. Miller, Deputy Director

8. Performing Organization Rept. No.

9. Performing Organization Name and Address
Institute of Criminal Law & Procedure
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001

10. Project/Task/Work Unit No.

11. Contract/Grant No.
DL 81-09-70-02

12. Sponsoring Agency Name and Address
U.S. Department of Labor
Manpower Administration
Office of Research and Development
1111 20th St., N.W. Washington, D.C. 20210

13. Type of Report & Period Covered
Final

14. Sponsoring Agency Code

15. Supplementary Notes

16. Abstracts The key findings are: 1) An arrest record not followed by conviction is a substantial obstacle to employment; 2) Present annullment and expunging statutes do not remove obstacles to employment for those with conviction records; 3) Despite statutes declaring juvenile adjudication to be non-criminal and state policies protecting their confidentiality, juvenile records are an obstacle to employment; 4) State civil service statutes provide no guidelines for civil service personnel to screen applicants with criminal records; 5) Job application forms frequently ask for arrest records and do not indicate that an individual with a criminal record is eligible for hiring; 6) Civil servie procedures generally act as a bar to employment for an individual with a record; 7) Civil Service educational requirements for many jobs are set too high considering the actual job to be done. These requirements discriminate against many ex-offenders, most of whom have a limited education; 8) Juvenile and adult correctional officials do not inform their wards and clients of their legal status and ways to mitigate the effect of the record on job opportunities.

17. Key Words and Document Analysis. 17a. Descriptors

Civil Service
Education (includes training)
Employment
Government policies
Juvenile delinquency
Local government
Performance
Qualifications
Rehabilitation
State government

17b. Identifiers/Open-Ended Terms

Criminal Records

Public Employment

17c. COSATI Field/Group 5A,D,I,K

18. Distribution Statement
Distribution is unlimited. Available from National Technical Information Service, Springfield Va., 22151.

19. Security Class (This Report)
UNCLASSIFIED

20. Security Class (This Page)
UNCLASSIFIED

21. No. of Pages
252

22. Price

GEORGETOWN UNIVERSITY LAW CENTER
INSTITUTE OF CRIMINAL LAW AND PROCEDURE
600 NEW JERSEY AVENUE N.W. WASHINGTON D C 20001
(202) 624-8220

SAMUEL DASH
DIRECTOR
HERBERT S. MILLER
DEPUTY DIRECTOR

Project Staff

Herbert S. Miller, Project Director

Samuel Dash, Director of the Institute

Walter M. Miller, Assistant to the Project Director

Stephen B. Rosenberg, Senior Research Attorney

Stanton G. Darling, Research Attorney

Martin Krubit, Research Attorney

Leonard Zeitz, Research Sociologist

William F. McDonald, Senior Research Criminologist

George Borkow, Research Associate

Student Research Assistants:

Linda Quinn
Arlene Carrington
Karen Moore
H. Cabanne Howard
Louis Wiley
William Martin

U S DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
NATIONAL INSTITUTE OF
EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY

TABLE OF CONTENTS

Page

Foreward iv

Introduction

Summary of Findings and Recommendations 1

Chapter 1 Analysis of Job Application Forms 11

- Criminal Record Inquiries
- Comprehensive Arrest Inquiry
- Suspicion/Investigation Inquiry
- Automatic Record Check
- Record Not Automatic Bar

Specific Exclusions 13

- A) Traffic
- B) Juvenile Offenses
- C) Time Limit on Offenses
- D) Sealed Record Exclusion

Specific Inclusionary Provisions 16

- A) Traffic
- B) Juvenile Offenses
- C) Defendant in Civil Case

Findings and Recommendations 18

Chapter 2 State Juvenile Policies and Their Effectiveness . . 22

- State Juvenile Policy Charts

Findings and Recommendations 32

Model Use of Juvenile Records Statute 34

Chapter 3 Civil Service Statutes and Rules 36

- General Statutory Provisions
- Firing
- Judicial Interpretations
- Statutes Authorizing the Hiring of Individuals with Records
- Civil Service Rules and Regulations

Findings and Recommendations 44

Page

Model Civil Service Criminal Conviction Statute 47

Chapter 4 Licensing and a Criminal Record 49

Chapter 5 Annullment and Expungement of Criminal Conviction . 57

Introduction
State Annullment and Expunging Statutes

Findings and Recommendations 68

Model Annullment and Sealing Statute 74

Chapter 6 National Survey of Hiring Practices and Policies. . 78

Introduction
Response to the Questionnaires

The Reported Practices 79

Types of Jobs Held By Persons With Criminal Records
Types of Information Requested By Employers from Job Applicants
Information Used by Employers
The Reported Policy Methods of Obtaining Criminal Record Information
Types of Criminal Records Used as Grounds For Not Hiring Applicants

The Impact of the Practices and Policies
Assessment of Work Characteristics of Employers with Criminal Records

Findings and Recommendations 100

Chapter 7 Site Visits at Six Selected Jurisdictions 103

Comparison of the Six Site Visit Jurisdictions. 103

Demographic Characteristics
Growth in Number of Employees

Civil Service Systems 110

Commissions
The Hiring Process

Page

Job Announcements
Job Qualifications
Special Problems of Prisoners
Attempts to Ease Rigid Requirements

The Six Jurisdictions 121

1. Nashville-Davidson, Tennessee

2. Hennepin County (Minneapolis), Minnesota

3. The State of Michigan

4. Newark, New Jersey

5. Phoenix, Arizona

6. San Francisco, California

Findings and Recommendations 138

Chapter 8 Arrest Records 147

The Use of Arrest Records
Effect of Arrest Records
Arrest Records as Evidencing Criminality
The Need for Federal Action

Findings and Recommendations 161

Appendices

A - Methodology 168
B - Analysis of Job Application Forms 175
C - Juvenile Statutes 177
D - State Civil Service Statutes 191
E - Licensing Restrictions 210
F - Eye For An Eye 216
G - Expungement Statutes 234
H - Selected Characteristics of Certain Jurisdictions 251

FOREWORD

Our criminal justice system is in a stage of disintegration. Our jails and prisons brutalize the inmates; there are few rehabilitative programs available; and many released prisoners swear vengeance upon a society which permits human beings to be so maltreated. Our probation and parole services are largely undermanned, and provide inadequate community supervision. Judges are undertrained and provided with few resources upon which to base intelligent sentencing decisions. Prosecutors and defense attorneys do not receive adequate training in law school, nor do they fully understand the role they should play in the criminal justice process.

There is nothing new in the statements contained in the above paragraph. The President's Commission on Law Enforcement and Administration of Justice, and many other commissions and study groups, have amply documented the failings of our system. This study of the employment problems of people with criminal records carries the story of inadequacy and short-sightedness on society's part much further. For it clearly illustrates that after subjecting individuals to all the horrors of the system we continue to pronounce a curse on them if they make an honest attempt to function in the community. In our society the ability to work is the benchmark by which an individual is judged. And just as clearly, we have succeeded in erecting numerous legal, administrative and customary obstacles to persons who have any kind of a record, including those who are handled as juveniles.

This study documents, perhaps for the first time, the innerdynamics of the system as it really operates on an individual with a record. The way in which criminal records are handled, frequently in opposition to stated legal and administrative policy, brings out into sharp relief the dilemma of a person who is asked on a job application form whether or not he has some kind of criminal record. To lie or not to lie, that is the question. As individuals with records so frequently find out, you are damned if you do and damned if you don't. Listen to what an ex-con says:

> "Now if you're out there on the bricks and looking for work, Joe, don't bother applying for any of those jobs I told you about and you'll save yourself a bundle of heartaches. Whenever you apply for any job, my advice is not to mention your record. That's right, lie to 'em. If they have a place on the employment application where it asks you if you've ever been convicted of a crime, put down N-O, no! If you don't, you're screening yourself out of 75 percent of all jobs, and damned near 100 percent of the better jobs. You have to look ahead too, Joe. Big Willie, the trustyland barber, has a brother working for one of the big steel companies. A friend got him the job, white collar too. That was seven, eight years ago, He's still on the same job, but guys who have only been with the company two or three years are moving right up the line to higher job classifications and better pay. Why? His boss told him why. He's got a record, and the company knows it's on his original employment application. His boss told him he was terribly sorry, that it wasn't his fault, but the higher-ups passed him up because fifteen years ago he served two years in prison. See, Joe, crime don't pay, because they ain't never going to let you up once they got you down. That's just the way it is.
>
> Go ahead and tell 'em if you want to, Joe. You're taking a chance no matter what you do. If you tell 'em, you don't get the job most of the time. If you don't tell 'em, and they find out, they fire you. You know Louie, the cellhouse clerk? He got a job and didn't tell 'em about his record. Louie's parole officer came around checking on him and blowed the job for Louie. How do you like them apples? And Gabby, the four block runner, went out and got a job that'll knock you out. He was hired as a credit investigator! Yah, handling confidential financial reports

> all day long. While he was still on parole too. His parole officer was an OK guy and said more power to 'em. Well, it took about two months because the employment application investigation isn't handled by regional offices but is done by the main office in New York. One day his boss calls him in, red-faced and all, and says to him, why didn't you tell us? Louie says, if I'd told you, would you have hired me? His boss says, of course not! Louie was canned."*

Although this study concentrates on civil service at the state and local level, its findings and recommendations are really applicable to the entire job market and to many private employers as well. The findings and recommendations of this study offer a blueprint for the reform of our national, state and local legal and administrative structure as it relates to people with criminal records and their attempts to find a job. There are model state laws suggested for realistic and effective expunging and annullment of conviction records, a juvenile record act which effectively prevents such records from being used when a job, license or bonding is at stake, and a suggested state civil service statute which sets the tone for state policy as encouraging the employment of individuals with records and which provides guidelines for the civil service commission or employing agency.

In addition, the study illustrates the obstacles which begin with the job application form. The questions asked undoubtedly deter individuals with criminal records from even filling out the application form. The study suggests total reconstruction of that section of the job application forms so as to make clear that a criminal record will not by itself prevent an individual from obtaining a job.

---

* Griswold, Misenheimer, Powers, and Tromanhauser, An Eye For An Eye, p. 265-266 (1970).

But the most striking finding and recommendation in this study relates to the existence and influence of arrest records sheets on perhaps one quarter of the population of the United States and the inadequate and distorted picture they may give of an individual's contact with the criminal justice system. In my opinion, the study documents beyond any reasonable doubt, that the existence and dissemination of these records amounts to an organized attempt by our society which prevents many individuals from functioning.

It is clear that action by the states or through the courts is an inadequate remedy. Although less clear, the basic elements for supporting Federal intervention have been set forth with precision and clarity. Undoubtedly further study will be necessary and it is now going on. The important thing is to move with dispatch to correct a problem which is now a national disgrace. Arrest records not followed by conviction should never be the basis upon which to reject an application for a job, license or bond.

The existence of this study and others, combined with the interest expressed by officials of the United States government and the American Bar Association, point to a convergence of interests which may not be repeated in the near future. If ever the time was propitious for an organized assault upon an outdated legal and administrative structure, it is now. The price we pay for continued reliance on a system which fails to rehabilitate, and worse which distorts and prevents human capabilities, is the specter of an increasing number of embittered and alienated individuals who will continue to explode in the faces of our children and their children. It is in our self-interest to provide a structure which encourages an individual to take his place as a functioning and productive member of society.

Samuel Dash, Director
Institute of Criminal Law & Procedure
Georgetown University Law Center

Introduction*

Previous studies of criminal records and employment have been largely limited to examing the practices of private employers as they related to ex-offenders. But few have been found which examined the practices of state and local government. Moreover, statistics indicate that over thirteen million persons are employed in state and local government, this being approximately 15% of the nation's total labor force. (As of December, 1971). All trends indicate a rapid expansion of employment possibilities. These factors dictated the thrust of this study.

The major conclusion of the study has been that the primary objective must be the reform of our legal and administrative structure at the state and federal level. This is initially reflected in the recommendations for both federal and state legislation. Other recommendations relate to changes in the format of job application forms and rules and regulations governing the processing of applicants with records. The job application forms must be completely revised in terms of the questions asked and the guidance they give to the applicant. There must be clear and precise standards promulgated by civil service commissions and distributed to personnel department employees and job applicants. In short, the subject must be brought out in the open.

---

* See Appendix A for statement of methodology used in the survey.

Obviously a massive job of education must be undertaken before the person with a criminal record can be fairly treated in our society. This was not within the purview of the study. But clearly the reeducation of people must be preceded by legal and administrative reform.

The American Bar Association, through its Special Commission on Correctional Services and Facilities and its Section of Criminal Law has already pledged to use the findings and recommendations of this study as a starting point to energize state and local bar associations to spark the legislative and administrative changes which will be required.* The Department of Labor is already operating experimental bonding programs and New York licensing practices as related to individuals with conviction records are being examined.**

This project could not have been undertaken or completed without the generous help from many people in the Manpower Administration of the U.S. Department of Labor. Among these was the constant encouragement, support and understanding given to the Project Director and others by William Paschell, Chief, Special Manpower Problems Group. This support would not have been possible without the firm back-up of Mr. Paschell's superior, Howard Rosen, Director, Office of Research and Development. Project staff of the survey continually received sympathetic encouragement and assistance from all Manpower Administration personnel, including Joseph W. Collins, Jr. and Eugene Johnson. It has been a pleasure for members of the Institute of Criminal Law and Procedure to have participated in this joint venture.

---

* The Labor Department has made a substantial grant to the American Bar Association for this purpose.

** For information concerning this pilot program write Manpower Administration, U.S. Department of Labor, Washington, D.C. 20210, and ask for the Federal Bonding Program, Questions and Answers (1971).

Summary of Findings and Recommendations

1. Finding -- Arrest records as job barriers -- Most jurisdictions ask about arrest records. Arrest records are grounds for not hiring in many jurisdictions. Many Americans have arrest records (not followed by conviction). Criminal records kept by law enforcement agencies are frequently inaccurate. The problem is national in scope and not susceptible to being corrected by state legislation or court action. See Chapter 8, Arrest Records.

Recommendation -- Federal legislation should prohibit all public or private employers from asking about arrest records on job application or other forms. Law enforcement agencies should be prohibited from divulging arrest records (not followed by conviction) where a request for record information concerns an application for a job, license, bonding, or any civil right or privilege.

2. Finding -- Inadequate expungement and annullment statutes -- Many states have such statutes, but most have proven inadequate concerning their effect when a person with an expunged record applies for a job. Many do not delineate the meaning of expungement or annullment. See Chapter 5, Annullment and Expunging Statutes.

Recommendation -- States should enact annullment and expungement statutes which require persons discharged from probation, parole and imprisonment to be informed of their right to apply for expungement and annullment. The court should grant such an order unless it finds the order inconsistent with the public interest. The court should state its reasons for not granting an order and its refusal should be appealable. If within two years following a termination of probation, parole, and final discharge from prison an order has not been granted, and no subsequent conviction has occurred, the court should enter an order on its own motion.

The statute should further provide that the effect of an order expunging and annulling a conviction should be to prevent inquiries about such a conviction being made as they related to an application for a job, license, bonding, or any civil right or privilege. It should require that law enforcement agencies be notified and therefore put on notice that they may not divulge the record for these pruposes. See Model Annullment and Sealing Statute at p. 74.

3. Finding -- Confidential status of juvenile records -- Despite state statutes relating to the confidentiality of juvenile records evidence indicates that employers frequently have access to them. Few states have statutes requiring the sealing and subsequent physical destruction and obliteration of juvenile records after an appropriate period of time. See Chapter 2, State Juvenile Policies and Their Effectiveness.

Recommendation -- States should enact a Use of Juvenile Record Statute which provides for all records to be sealed. Except for sentencing and certain law enforcement purposes, such records should not be released where a request for information is related to an application for employment, license, bonding, or any civil right or privilege.

Records of juvenile proceedings where no adjudication is entered should not be released under any circumstances.

The statute should explicitly require that juveniles be informed of these procedures and how the status of their juvenile record relates to whether or not they must acknowledge this record on any applications or in any other proceedings.

Two years after a juvenile proceeding, and where no subsequent adjudication or conviction has occurred, the entire file and record of the proceeding should be destroyed and obliterated by order of the court. See Model Use of Juvenile Record Statute at p.34.

4. Finding -- Civil Service statutes as barriers -- Civil service statutes, which vary in the different states, invariably offer inadequate guidelines to civil service commissions and personnel directors. Most use language which could be, and apparently is, grounds to exclude large numbers of individuals with criminal records. Few statutes state that applicants with criminal records may be eligible for civil service employment. Few statutes provide for any amelioration of the effect of a criminal record. See Chapter 3, Civil Service Statutes and Rules.

Recommendation -- Civil service statutes should have an express provision stating that no person with a criminal conviction record shall be automatically disqualified from taking a civil service examination. Such statutes should also specify that such applicants are entitled to equal processing under the rules. Finally they should provide guidelines for hiring officials to use in making their discretionary hiring decisions. See Model Civil Service Criminal Conviction Statute at p. 47 .

5. Finding -- Criminal record inquiries by civil service -- Almost all jurisdictions ask about criminal records. Few state that a record does not automatically disqualify the applicant. See Chapter 1, Analysis of Job Application Forms.

Recommendation -- All job applicants should be advised that a criminal record does not automatically disqualify the applicant. See Finding and Recommendation No. 6.

6. Finding -- Review of juvenile records by civil service -- State statutes regard juvenile records as non-criminal, and not a conviction. They frequently specify that it is not grounds for civil service disqualification. Yet few jurisdictions advise the applicant to exclude a juvenile record on the job application forms. Some jurisdictions specifically ask for the inclusion of juvenile records. See Chapter 2.

Recommendation -- Job application forms should advise applicants to exclude any juvenile record.

7. Finding -- Few jurisdictions advise applicants to exclude old criminal records which may have little value in determining the applicant's present status. See Chapter 1.

Recommendation -- The model annullment statute would remedy this problem. In the alternative, job application forms should declare a period of time beyond which criminal records need not be revealed.

8. Finding -- Lack of civil service guidelines as a barrier -- Civil service regulations which govern the processing of individuals with criminal records are either non-existent, inadequate, or not communicated. This permits personnel employees to screen out applicants with criminal records using discretion unregulated by any standards. See Chapter 3.

Recommendation -- Clear rules and regulations should be promulgated, distrubuted and followed-up by discussion of their meaning. In particular, they should be made available to job applicants prior to forms being filled out or examinations being taken.

9. Finding -- Civil service employment delays -- Some jurisdictions had long delays between submission of an application and a job decision. Individuals leaving prison need jobs right away. See Chapter 7, Site Visits at Six Selected Jurisdictions.

Recommendation -- Efforts should be made to shorten this time.

10. Finding -- High civil service education requirements -- Standards frequently require a high school education for too many jobs. Many offenders do not have a high school education. See Chapter 7.

Recommendation -- Educational criteria should be re-examined to make certain that only necessary educational levels are established for each position.

11. Finding -- Civil service job announcements -- Examination announcements are frequently not communicated to prison inmates. See

Chapter 7.

Recommendation -- Efforts should be made to provide for wide distribution and communication of job announcements.

12. Finding -- Civil service examinations in prisons -- Prison inmates frequently cannot get released to take examinations. In some jurisdictions civil service personnel could not or would not administer examinations at the prison. See Chapter 7.

Recommendation -- A way should be found to bring examinations and applicants together.

13. Finding -- Inadequate civil service data collection -- Most agencies had no statistical data concerning their employment of individuals with criminal records. See Chapter 6, National Survey of Hiring Practices and Policies.

Recommendation -- Government agencies should gather statistical information to provide rational grounds for instituting, abandoning, or modifying employment policies.

14. Finding -- Probation and parole officers are rarely involved in the expungement process. See Chapter 5.

Recommendation -- Probation and parole officers should be authorized to initiate annullment proceedings. See model statute.

15. Finding -- Job standards as barriers -- Some jobs require an apprenticeship, or extensive prior experience. These requirements were an obstacle in some cases. See Chapter 7.

Recommendation -- Prison, union, and public employment officials should attempt to establish reasonable apprentice and experience requirements. Prison training should meet these requirements and union and public employment officials should agree to accept qualified ex-offender graduates.

Chapter 1

Analysis of Job Application Forms

A significant aspect of this survey was the collection of job application forms from a number of jurisdictions. These made the survey staff aware of how significant a criminal record is in terms of obtaining employment. They further revealed the frequency with which arrest record inquiries (where no conviction has followed) are included in the job application forms.

Criminal Record Inquiries

Those jurisdictions classified as asking "arrest" questions are counted according to the lowest denominator phrase used, thus a question beginning with "convicted" but including "arrest" would be classified under "arrest". Of 48 tabulated responding states, one, Nebraska, asks no questions relating to previous offenses or criminal record. Twenty-six states (54%) start their queries with "arrested", "charged", or "cited". Twenty-one states (44%) query the applicant about "convictions", "sentences", or "imprisonment".

Of the 170 tabulated responding counties, 33 (19%) sought no information relating to previous offenses, 94 (55%) sought arrest information and 43 (25%) sought convictions only. Of the 224 tabulated responding cities, 12 (5%) sought no information, 172 (77%) sought arrest information, and 40 (18%) sought convictions only.*

Comprehensive Arrest Inquiry

Occasionally a questionnaire would inquire about previous offenses or criminal record with an elaborate, comprehensive question such as "Have you ever been arrested, indicted, summoned, convicted, fined, imprisoned, placed on probation, or ordered to deposit bail?"

---

* See Appendix B for statistical analysis of job application forms.

Where this question, or one similar in form, was asked, the following tabulations resulted: Two states (approximately 4% of all states tabulated), 14 counties (approx. 8% of all counties tabulated), and 13 cities (approx. 6% of all cities tabulated) asked such a question.

Suspicion/Investigation Inquiry

A few jurisdictions, usually when asking an "arrest" question, would include a statement as to whether the applicant had been arrested for suspicion or investigation. According to the tabulation, no state, three counties (2% of those tabulated), and fourteen cities (6%) asked a question specifically including one or the other of these terms.

Automatic Record Check

Most jurisdictions include somewhere on the application a statement that the data would be checked with the police and other sources. Some included this statement in the same box as or immediately after the criminal record inquiry, thus possibly suggesting greater emphasis upon criminal record as an employment factor. Included in these inquiries are those which state that fingerprints are required or in which the applicant is asked if he objects to being fingerprinted. This statement and question may have a particularly chilling effect upon the applicant with a prior record. One state, 11 counties (6%) and 11 cities (5%) have such statements.

Record Not Automatic Bar

Few jurisdictions include in the question inquiring about past criminal records a statement that a prior record (be it arrest or conviction as the case might be) does not automatically disqualify the applicant from consideration. A few state that each case is considered on its individual merits. Probation officers and some ex-offenders in several jurisdictions indicated that the question alone might discourage an applicant with a record from filling out the form.

Five states (11% of those tabulated), 8 counties (5%) and 8 cities (4%) had such statements. The Institute believes that there should be no automatic exclusions from employment, and that such a statement should always be part of the job application form.

SPECIFIC EXCLUSIONS

A) Traffic: Some jurisdictions, in asking about the prior record, include a statement such as "do not include minor traffic violations." Most do not detail what constitutes a "minor" offense but the following provisions indicate the attitude some jurisdictions take:

Solano County, California; High Point, North Carolina; Bay City, Michigan -- applications state that drunken driving, reckless driving, and hit-run driving are not minor.

Humboldt County, California -- application authorizes exclusion of traffic offenses involving faulty equipment, parking, hand or traffic signals, signs or speeding.

San Bernardino County, California -- application authorizes exclusion of minor traffic violations such as parking or speeding unless a warrant was issued for the applicant's arrest.

Cranston, Rhode Island -- application requires inclusion of police fines other than parking.

Flint and Kalamazoo, Michigan; Miami Beach and West Palm Beach, Florida -- applications require inclusion of moving traffic violations.

In some cases indication of the point for drawing the line is revealed in inquiries as to fines paid and which fines to exclude. Four counties (27% of those tabulated) and six cities (3%) provide exclusions based in terms of fines. Often the fines are expressed in terms relative to traffic offenses. For example:

Clark County, Nevada; Santa Barbara County, California; Omaha, Nebraska -- application authorizes exclusion of traffic offenses with fines under $25.00.

Lorain County, Ohio -- application authorizes exclusion of traffic fines under $75.00.

Washington, D.C. -- application authorizes exclusion of traffic fines under $30.00.

Of those applications which expressly provide that "minor traffic offenses" are to be excluded (but not including those phrased in terms of fines, however denominated) the following results occurred:

A total of 26 states (57% of those tabulated), 81 counties (48%) and 88 cities (39%) include such questions. The Institute believes that the inclusions and exclusions should be more specific, and that some uniform standard should be used as a guideline.

B) Juvenile Offenses: Few jurisdictions advise the applicant to exclude juvenile offenses. Occasionally the question is termed in reference to a specific age. Three cities used age 16, twelve cities (ten from Massachusetts where state law governs) use age 17, and two cities use age 18 as cutoff points. Two counties use age 16 and one uses age 18. One state uses age 21.

In total, seven states (15% of those tabulated), 5 counties (3%) and 17 cities (8%) use some form of terminology to exclude juvenile offenses.

C) Time Limit on Offenses: Few jurisdictions advise the applicant not to include offenses occurring beyond a stated period of time in the past (juvenile offenses not being included here). Massachusetts (the only state with a time provision) provides the following by statute and in the application:

> It will not be necessary for you to furnish any information of arrest or conviction of drunkenness, simple assault, speeding, minor traffic violations or disturbance of the peace if such arrest or conviction occurred more than ten years ago. A complete statement of your case may be obtained upon application to . . . . If you have a record which has been pardoned, such record should be stated, and a copy of the pardon should be attached to this application.

Cumberland County, Pennsylvania (the only county with a time provision) asks if the applicant has been arrested during the last five years, ever been convicted of a felony or convicted of any crime in the last two years.

The cities of Cambridge, Holyoke, Lynn, Malden, Medford, New Bedford, Somerville, Springfield, Quincy, and Worcester, Massachusetts (which are all governed by statute) exclude the same minor offenses if they occurred ten years previously.

D) Sealed Record Exclusion: Only one jurisdiction specifically mentions sealed records. Los Angeles County, California, advises applicants to specifically include juvenile offenses unless sealed. It should be noted that Los Angeles, California, requires the inclusion of offenses dismissed or "legally cleared from your record."

---

* Sealing generally is a method whereby an official record is physically secured against unintentional observation or where some form of notice is made to inform record custodians that disclosure of the contents is not to be made without a court order.

SPECIFIC INCLUSIONARY PROVISIONS

A) Traffic: Occasionally a jurisdiction advises the applicant to include minor traffic violations. There were no states, four counties (2% of those tabulated), and 37 cities (17%) which sought such information.

B) Juvenile Offenses: Several jurisdictions specifically advise the applicant to include juvenile offenses. Occasionally it was phrased such as the inquiry of Garden Grove, California, where the applicant was to include an arrest "at any time in your life." (The same terminology was also used by Pomona and San Bernardino, California). Columbus, Ohio requires the inclusion of juvenile and adult records. Eight counties (5% of those tabulated), and 17 cities (8%)seek such records.*

C) Defendant in Civil Case: Three states (7% of those tabulated), six counties (4%) and four cities (2%) ask if the applicant has ever served as a defendant in a civil case.

Miscellaneous information

Some of the applications make a statement near or in their inquiry about a criminal record as to whether the applicant is willing to be fingerprinted or take a lie detector test, or it is stated near or in the record inquiry that an automatic check of Police or FBI will be made. It is believed that this procedure may indicate a restrictive approach to those persons with records. (It should be noted that most applications state somewhere that a routine taking of fingerprints will be made, or there may be a general statement elsewhere that routine checks may be made. The focus of this survey was such statements made relatively near to the actual information regarding past records).

---

* See chart on pp. 27-31 for identification.

Findings and Recommendations

1. Finding -- A majority of jurisdictions ask questions pertaining to arrest records.

Recommendation -- See Chapter 8, Arrest Records and the recommendation therein for federal action to prohibit any request for arrest records on job applications and restricting the release of arrest records by federal, state and local agencies or police departments.

2. Finding -- Few jurisdictions include in the question concerning criminal records any statement that such a record would not automatically disqualify the applicant from consideration.

Recommendation -- Every job application form should contain a statement clearly indicating that conviction of a crime does not automatically disqualify an applicant for a job. This statement should be contained in the same box as that in which the question about a record is asked.

3. Finding -- Many jurisdictions exclude certain kinds of crimes by stating in the job application form that the applicant should not include minor crimes, certain kinds of traffic offenses, or crimes for which the fine was under a specified amount. The language used in the different jurisdictions is quite different, as are the amounts, and it is difficult for any applicant to determine in all cases just what answer was or was not required.

Recommendation -- The recommendation here must be keyed in with the recommended model expungement and annullment statute suggested in Chapter 5, Expungement and Annullment of Criminal Conviction Records. Under this statute the following language is suggested: "Have you ever been convicted of a crime which has not been annulled or expunged by a court?"

There must also be guidelines for a standard to determine where the line should be drawn for minor offenses and youthful offenders. One approach might be to advise the applicant to exclude all offenses where no court appearance has been made and also those cases where the person elected to forfeit collateral under a certain amount. This usually occurs with very minor crimes. Quite frequently individuals elect to forfeit low collateral because of the major inconvenience and expense to them if they have to make further appearances. In cases where a courtroom appearance is made and there is a finding of guilt then obviously the person would have to answer because it is a conviction. Where the person is acquitted or the charges are dismissed then under the recommendation prohibiting an arrest record question, the person would not be required to answer.

The following is the wording used on U.S. Civil Service Commission Standard Form 171.

> 29. Have you ever been convicted of an offense against the law or forfeited collateral, or are you now under charges for any offense against the law? (You may omit: (1) traffic violations for which you paid a fine of $30.00 or less; and (2) any offense committed before your 21st birthday which was finally adjudicated in a juvenile court or under a Youth Offender law.) . . . .
> 30. While in the military service were you ever convicted by general court-martial? . . . .
> If your answer to 29 or 30 is "Yes", give details in Item 34. Show for each offense: (1) date; (2) charge; (3) place; (4) court; and (5) action taken.

The Institute suggests two improvements in this form:

1) Require a forfeiture of collateral to be more than [$30]; and

2) Delete the word "traffic" so that any violations involving funds of $30 or less would be omitted.

4. Finding -- Very few jurisdictions advise the applicant to exclude juvenile offenses. Some states use chronological age as a cut-off point, rather than the legal designation of a juvenile.

Recommendation -- No juvenile record of any sort should be asked for in a job application form. In fact the applicant should be advised to specifically exclude any juvenile adjudications. The exclusion of juvenile offenses should be keyed to the legal designation as a juvenile in whatever jurisdiction the child was processed, rather than using age as a factor. The reason for this recommendation is that in many jurisdictions juveniles can be waived to adult court if a particularly serious crime is involved. A conviction of a crime may result and this should be treated as any conviction. The question asked in Standard Form 171 commends itself.

5. Finding -- Few jurisdictions exclude offenses which had been committed a substantial time ago. Applicants in some circumstances may be excluded because of old criminal records which have little value in determining the applicant's present status.

Recommendation -- The model statute on expungement and annullment of criminal conviction records contains provisions for the expungement of the conviction record after certain periods of time. Should such a statute be in effect it would automatically provide a time frame after an applicant would not have to answer questions as to crimes committed a long time ago. If this provision is not included the criminal record inquiry on application forms should clearly define a time beyond which criminal records need not be admitted. For example, "Have you ever been convicted of a crime which has not been annulled or expunged by a court within the past two years?"

Chapter 2

State Juvenile Policies and Their Effectiveness

If a state may be said to have a "policy" in a given field, an initial point for determining that policy would be in studying statutory pronouncements.* Most states have provided by statute that minors should be treated more leniently than adults. In theory most courts have kept in mind the policy of treating juveniles less severely than adults for a given offense. The charts at the end of this chapter** spell out state statutory procedures and compare them with information sought on job applications by cities and counties within the state.

Where a jurisdiction specifically seeks information regarding a juvenile record, this may contradict state policy if the state has certain statutes. In all cases where a county or city sought this information the state had at least one of three statutes (juvenile proceedings will not result in a minor being determined a criminal; juvenile proceeding is not considered a conviction; or juvenile proceeding is not a disqualifying factor for civil service). In Florida, Ohio, Texas and Virginia, where subordinate jurisdictions sought such information, all three statutes were in effect.

---

* Appendix C summarizes in chart form relevant juvenile statutory provisions for all states.

** See pp. 28-31

Where a jurisdiction requires job applicants to disclose arrest records without including a statement that juvenile offenses should not be included, the application form would appear to be in derogation of any existing state policy intended to protect juveniles. For example, of the twenty-six states seeking arrest record information, twenty-four have statutes providing that juvenile records may not serve to disqualify the applicant for civil service. Similarly, fifty counties and ninety-two cities ask for arrest information without excluding juvenile offenses despite the fact of being subject to a state statutory provision providing applicants may not be disqualified for juvenile offenses.

All but three states, Hawaii, Iowa and South Dakota, have passed at least one of the three statutes. Hawaii handles juvenile matters in family court without express statutory policy. The Iowa statute provides expressly that juvenile records are _not_ confidential. South Dakota has a statute requiring a court order to inspect juvenile records and another statute requiring a court order before any release can occur.

All states except Iowa have chosen to create a policy of regarding juveniles offenses vastly different from adult offenses. But the cooperation of subordinate jurisdictions with the spirit of that policy, if not the law, has been poor. Only 15% of the states, 3% of the counties, and 8% of the cities expressly follow this policy by informing juveniles on job application forms not to reveal juvenile adjudication.* While seeking "conviction" information is more protective than seeking "arrest" information (which would include juvenile arrests), only 45% of the states, 25% of the counties, and 17% of the cities limit their inquiries to the conviction. Granted, one state, 19% of the counties, and 5% of the cities seek no information at all, but the total picture is far from apparent compliance with announced policy.

---

* In Chapter 1, Job Application Forms, we have recommended that job application forms specifically advise applicants not to include juvenile records.

Most jurisdictions which have statutes permitting or limiting the inspection of juvenile records require a court order before the record can be looked at (See Appendix C.[1/] In one jurisdiction which received an on-site inspection the court had delegated this authority to the juvenile probation department which routinely made the records available to employers (Nashville-Davidson). Furthermore, adjudicated juveniles are advised upon their release to reveal their records when applying for employment. (see page 124) In Hennepin County, Minnesota, under similar state statute, the policy was quite different. The juvenile probation department refused anyone access to juvenile records unless they obtained a court order. It was their policy to oppose the release of the record to anyone. Few states have statutes authorizing the destruction of juvenile records.

It was brought to the Institute's attention that in California one juvenile, against whom charges were subsequently dismissed, obtained a court order sealing the arrest record. In making a later application for employment with a business firm, this person noted on the application there were no prior arrests, this being expressly provided by California

Penal Code Sec. 851.7. Nevertheless, the employer was able to obtain the arrest record and the individual was fired for having falsified the employment application.

Despite juvenile statutes relating to the destruction of records and inspection of records, practices and customs of a jurisdiction may determine how open a juvenile record is to employers and others. If the real intent of juvenile codes is to be observed then no individual should be burdened with the obstacle to job finding which a juvenile record can become. There should be a state statute flatly prohibiting the divulgence of a juvenile record for purposes of obtaining a job, licensing, bonding, or any civil right or privilege.

Carrying this approach a step further the Institute believes that after a reasonable period of time subsequent to a juvenile adjudication the record should be automatically destroyed and obliterated at all levels of the court system and in whatever government agency it may be similarly recorded. Juvenile hearings are held in private, allegedly to protect the juvenile. Of what use is such protection should the record thereafter be made public and kept on the books indefinitely, subject to use and abuse so long as it survives.

Somewhere, at some point in time, there must be an end to the potential impact of juvenile records on a person's life. The Institute is therefore recommending a model use of juvenile record statute which would require sealing and prohibition on its use except for certain limited purposes, and calls for its destruction and obliteration after a certain period has passed. It may be that some jurisdiction would wish to condition this destruction and obliteration on the interval between the adjudication and destruction being clear of further juvenile or criminal proceedings.

1/ But in In Re Gault, 387 U.S. 1, 24-25 (1967) the court stated:

> "In most States the police keep a complete file of juvenile 'police contacts' and have complete discretion as to disclosure of juvenile records. Police departments receive requests for information from the FBI and other law-enforcement agencies, the Armed Forces, and social service agencies, and most of them generally comply. Private employers word their application forms to produce information concerning juvenile arrests and court proceedings, and in some jurisdictions information concerning juvenile police contacts is furnished private employers as well as government agencies."

STATE JUVENILE POLICY CHARTS

The following chart attempts to compare announced state juvenile "policy" with civil service job application forms used within that state by state, county, or local civil service systems. An "x" under one of the first three columns indicates the presence of a state statute indicating a juvenile offender is not to be regarded as a "criminal", that a juvenile adjudication is not to be regarded as a "conviction", or that an adjudication is not to be considered disqualifying for civil service employment. Citations to these statutes are given in the chart in Appendix C. Data taken from the state civil service application form and those subordinate counties and cities with qualifying population totals are tabulated to the right. The questions regarding criminal records and whether or not the applicant is advised to either include or exclude a juvenile record is considered state by state. See Appendix B infra for total analysis of job application forms. It is the opinion of the Institute that a state which announces a policy of leniency towards juveniles violates that policy if either of the following occurs: (1) any job application form within the state seeks information concerning any record not limited to a "conviction" and (2) any job application form which fails to explicitly advise applicants not to disclose juvenile records.

Those counties and cities whose job application forms specifically advise applicants to include juvenile offenses within the given state are enumerated.

STATE JUVENILE "POLICY" versus APPLICATION BY STATE AND SUBORDINATE JURISDICTIONS

STATE	STAT:Juv. not "Crim."	STAT:Adjud.not"Conv."	STAT:No Civ.Ser.Disq	STATE JOB APPLICATION FORMS						Counties within State, Job Application Forms Surveyed							Cities within State, Job Application Forms Surveyed						
				Crim. Record Inquiry			Juv. Record Inquiry			Crim. Record Inquiry			Juv. Record Inquiry			Counties Seeking Juv.Record	Crim. Record Inquiry			Juv. Record Inquiry			Cities Seeking Juv. Record
				None	Arrest	Conv.	Exclude	Include	None	None	Arrest	Conv.	Exclude	Include	None		None	Arrest	Conv.	Exclude	Include	None	
Alabama	x	x	x		x						3	1			4			1	2			3	
Alaska	x	x	x		x																		
Arizona	x	x	x			x					1	1			2			2			2		
Arkansas	x					x	x				1				1			2				2	Tucson Phoenix
California		x				x	x				10	10	1	5	14	a/		21	11	1	6	25	b/
Colorado			x		x					1		2			3			2	1		1	2	Pueblo
Connecticut		x				x					1			1	0	New London	1	6	1			8	
Delaware	x	x				x						1			1				1			1	
Florida	x	x	x			x				1	7	2	1	1	8	Broward		7	1			8	
Georgia		x			x						2	1			3		1	2	1		1	3	Macon
Hawaii					x						1				1			1				1	
Idaho	x	x	x		x		x																
Illinois	x	x			x					3	2				5		1	8	3			12	
Indiana	x	x	x		x					3					3		2	3				5	
Iowa						x	x			3					3			6				6	

STATE JUVENILE "POLICY" versus APPLICATION BY STATE AND SUBORDINATE JURISDICTIONS

STATE	STAT:Juv. not "Crim."	STAT:Adjud.not"Conv."	STAT:No Civ.Ser.Disq.	STATE JOB APPLICATION FORMS						Counties within State, Job Application Forms Surveyed							Cities within State, Job Application Forms Surveyed						
				Crim. Record Inquiry			Juv. Record Inquiry			Crim. Record Inquiry			Juv. Record Inquiry			Counties Seeking Juv.Record	Crim. Record Inquiry			Juv. Record Inquiry			Cities Seeking Juv. Record
				None	Arrest	Conv.	Exclude	Include	None	None	Arrest	Conv.	Exclude	Include	None		None	Arrest	Conv.	Exclude	Include	None	
Kansas		x			x							1			1				1			1	
Kentucky	x	x			x						2				2			2				2	
Louisiana	x	x	x		x						4				4			2				2	
Maine	x	x			x						1				1			1				1	
Maryland		x			x						2	1			3			1				1	
Mass.	x	x	x		x		x								0		1	11		11		1	
Michigan		x				x				3	6	2			11			11	3	1		13	
Minn.		x				x					2	1			3			2	2	1	1	2	Bloomington
Miss.	x	x			x																		
Missouri	x	x	x			x					2				2			5	1			6	
Montana	x	x			x													1	1			1	
Nebraska		x	x	x										0				1	1			2	
Nevada		x			x						1				1			1				1	
New Hamp.	x	x			x						1			1			1					1	
New Jersey	x	x	x		x						[illegible]	1		9				8				9	

: JUVENILE "POLICY" versus A[illegible]TION BY STATE AND SUB[illegible]

STATE	STAT:Juv. not "Crim."	STAT:Adjud.not"Conv."	STAT:No Civ.Ser.Disq.	STATE JOB APPLICATION FORMS						Counties within State, Job Application Forms Surveyed							C[illegible] [illegible]hi[illegible] [illegible]te, Job Application Forms Surveyed						
				Crim. Record Inquiry			Juv. Record Inquiry			Crim. Record Inquiry			Juv. Record Inquiry			Counties Seeking Juv.Record	Crim. Record Inquiry			Juv. Record Inquiry			Cities Seeking Juv. Record
				None	Arrest	Conv.	Exclude	Include	None	None	Arrest	Conv.	Exclude	Include	None		None	Arrest	Conv.	Exclude	Include	None	
New Mexico		x	x			x						1			1			1				1	
New York	x	x	x			x	x			0	13	1	2		12			8		1		7	
N.C.	x	x			x					1		3			4			6	1		1	6	High Point
N. Dakota	x	x	x			x																	
Ohio	x	x	x			x				2	2	1			5			9	1		4	6	Columbus, Dayton, Kettering, Lakewood
Oklahoma	x	x				x					2				2								
Oregon		x				x					1	3			4								
Penn.	x	x			x		x			7	6	4			17			2				2	
R. I.	x	x	x			x									0			2	2			4	
S.C.	x	x			x					1	2				3			1				1	
S. Dakota					x													1				1	
Tenn.	x				x						2	1			3		1	3				4	
Texas	x	x	x							3	3	1			7		1	17			1	17	Houston
Utah		x	x			x				1	1	1			3		1	1				2	
Vermont	x	x	x			x																	

FILMED FROM BEST AVAILABLE COPY

STATE JUVENILE "POLICY" versus APPLICATION BY STATE AND SUBORDINATE JURISDICTIONS

STATE	STAT:Juv. not "Crim."	STAT:Ad'ud. not "Conv."	STAT:No Civ. Ser. Disq.	STATE JOB APPLICATION FORMS: Crim. Record Inquiry			Juv. Record Inquiry			Counties within State Job Application Forms Surveyed: Crim. Record Inquiry			Juv. Record Inquiry			Counties Seeking Juv. Record	Cities within State Job Application Forms Surveyed: Crim. Record Inquiry			Juv. Record Inquiry			Cities Seeking Juv. Record
				None	Arrest	Conv.	Exclude	Include	None	None	Arrest	Conv.	Exclude	Include	None		None	Arrest	Conv.	Exclude	Include	None	
Virginia	x	x	x			x					[illegible]	1			3		1	8	1		1	9	Alexandria
Washington		x			x					2	2				4			[illegible]		1		2	
W. Vir	x	x	x		x										0		1	[illegible]				2	
Wis.	x	x	x			x				1	4	2	1		6		1	2	1			4	
Wyoming	x	x				x																	
D.C.	x	x	x															[illegible]				1	
TOTALS	34	45	24	1	[illegible]	22	[illegible]	5	45	32	96	43	5	7	159	171 total counties	12	173	38	17	18	188	223 total cities
					[illegible]	45%	4%			19%	[illegible]	25%	3%	4%			5%	78%	17%	8%	8%		
Local jurisdictions seeking juvenile records on job application forms																30							92

a/ California counties seeking juvenile record-Salano, Kern, Los Angeles, Orange, San Bernadino

b/ California cities seeking juvenile record-Garden Grove, Pomona, San Bernadino, San Diego, San Mateo, Glendale

Findings and Recommendations

1. Finding -- Most states provide by statute that juveniles should not be treated as criminals. Yet job application forms fail to distinguish between adult and juvenile applicants.

Recommendation -- Civil service job application forms should state expressly that juvenile records need not be revealed. The state government should also attempt to insure that local governments are provided with policy statements and guidelines to enable them to adhere to announced state policies. See the recommendation concerning a model job application question on pp. .

2. Finding -- Juvenile records in some states are available to employers, public and non-public, through both formal and informal channels, despite state statutes announcing a policy of non-disclosure.

Recommendation -- Except for carefully framed exceptions state statutes should prohibit the releasing of juvenile records where the information sought is related to jobs, licensing, bonding, or any civil right or privilege. See Model Use of Juvenile Record Statute p. 34.

3. Finding -- Juvenile records are retained long after the information contained has become obsolete.

Recommendation -- After a reasonable period of time these records should be automatically destroyed wherever recorded. Furthermore, studies should be undertaken to determine ways in which the number of copies of each record or references to a particular juvenile's name might be recorded so that all copies may be systematically destroyed.

The statute should explicitly require that juveniles be informed of these procedures and actions. Such information should include an explanation of how their status relates to applications for jobs, licensing, bonding and whether or not any adknowledgement of a juvenile record must be made. See the model use of Juvenile Record Statute on p. 34.

Model Use of Juvenile Record Statute*

Section 1 (a). In all cases wherein a juvenile adjudication has been entered against a juvenile, the court shall order the court records sealed. Except under the following circumstances, after such sealing the records shall not be released.

(1) inquiries received from another court of law;

(2) inquiries from an agency preparing a presentence report for another court;

(3) inquiries from law enforcement agencies where the request for information is related to the investigation of a crime or a position within that agency; and

(4) inquiries from an agency considering the person for a position immediately and directly affecting the national security.

Information about the sealed record may not otherwise be released when the request for information is related to an application for employment, license, holding or any civil right or privilege. Responses to such inquiries shall not be different from responses made about persons who have not been adjudicated a delinquent.

(b) Records of juvenile proceedings where adjudication of delinquency was not entered shall be sealed. Such records may not be released under any circumstances.

---

* This proposed statute is limited to the use and destruction of the juvenile record. It does not purport to include provisions which remove juvenile adjudications from the sphere of a criminal conviction . Existing statutes which effectively protect the confidentiality of juvenile records may lessen the necessity for section 1 of this proposed model statute.

Section 2. No later than two years after a juvenile proceeding, and no subsequent juvenile adjudication or criminal conviction has occurred, the entire file and record of such proceedings shall be destroyed and obliterated by order of the court. This destruction shall include any and all references to the case wherever recorded. The order shall apply to all government agencies, courts, judges, magistrates, peace officers, or other similar officers and to private agencies. Notice of such order shall be sent to all agencies and organizations which the court has reason to believe may have obtained information about the juvenile record. All such agencies and organizations shall notify the court of action take in response to the order. Responses to requests for record information after such destruction shall be worded in the same manner as responses for information about individuals where no record had ever existed.

Section 3. Juvenile courts and institutions exercising jurisdiction over any juvenile shall inform the juvenile, his parents or guardian, in writing of rights relating to the sealing of his juvenile record. Where the record has been destroyed the court shall attempt to notify the juvenile, his parents or guardian of such destruction and its effect on his legal status. The information in these communications shall be in clear and non-technical language.

Chapter 3

Civil Service Statutes and Rules

General Statutory Provisions

As are juvenile policies, nearly all state employment practices are governed by statute. Appendix D gives details of a survey of state civil service statutes made to determine what standards have been provided to guide public hiring authorities as to persons with criminal records. The statutory survey was limited to the classified civil service which comprises the bulk of public employees.

The statutes in Appendix D under "hiring provisions" speak in terms which indicate the purpose of the civil service system. Most indicate that employment is based upon merit, ability, or fitness and offer no specific guidelines for hiring authorities. "Exclusionary provisions" establish categories deemed by the legislature to render applicants unfit for public employment. These provide the most significant obstacles to employment of persons with criminal records, both in those calling for mandatory exclusion and those which authorize exclusion by the hiring authority. On-site interviews and study indicates that as a practical matter employers generally will not hire persons with criminal records if there are other qualified applicants without such records.

Approximately one-third of the jurisdictions provide that an incorrect statement in application forms is grounds for rejecting an applicant. Persons with criminal records may not admit to it because of the fear, frequently justified, that it will act as a barrier to their employment.*

Nearly one-third of the jurisdictions (perhaps 40% of the cities) have authorization to exclude applicants deemed "unfit". Depending upon the attitudes of civil service staff towards persons with criminal records, such provisions could be used to eliminate applicants with criminal records who are otherwise qualified for employment. Approximately one fifth of the jurisdictions exclude persons guilty of infamous or notoriously disgraceful conduct. While this phraseology is less susceptible to misinterpretation than "unfitness", the term "guilty" does not necessarily imply, in layman terms, "conviction" in legal terms. Hence an arrest may be deemed sufficient in some jurisdictions; in yet others reports of such behavior may suffice. Moreover, only a few jurisdictions describe what is to be considered as infamous or notoriously disgraceful.

Approximately one tenth of the states and 20% of the counties and municipalities provide for the specific exclusion of individuals for criminal offenses. The terminology varies; some statutes provide for rejection of applicants found not law-abiding, or who had an unsatisfactory arrest record, while others reject persons found guilty of or convicted of a crime. At least the two former phrases may prove to be obstacles to persons with arrest records while the latter two suggest a stricter standard. None, however, provide for the separation of minor offenses from severe offenses or discuss any relationship between the offense and the position sought. Finally, several states provide for the rejection of individuals found "not qualified." This could imply that the applicant lacked adequate training or education for the position sought; such vague wording, however, provides a broad umbrella under which other factors might be considered.

---

* "Many tales suggest that the probability of getting a job is reduced if information on the criminal record is volunteered in applying for employment, but other accounts suggest that men generally will be retained in employment, despite company policy against hiring ex-convicts, if they establish a good work record before their criminal record is revealed." Glaser, The Effectiveness of a Prison and Parole System, 234 (Abridged Edition 1969).

Firing

Virtually all jurisdictions provide for a period of probationary employment lasting from three months to a year. With few exceptions, employment during this period is considered to be at the pleasure of the hiring authority; an employee may be dismissed without the requirements applicable to permanent employees (such as a hearing).

Standards applicable to permanent employees provide in approximately half the states and municipalities that an individual may be fired for misconduct or for cause. Rarely is there any statutory indication of what is included in these terms. Approximately half of the county provisions indicate, without providing guidelines, that employees may be dismissed. Approximately 20% of the states and 15% of the counties and municipalities provide that persons may be dismissed "for the good of the service." No standards are provided to indicate what constitutes "the good of the service." Five percent of the state and local provisions specifically indicate that an individual may be fired for a misstatement in his original application.

Approximately 14% of the states and 6% of the municipalities contain provisions expressly declaring that an individual may be fired for criminal conduct. Many of the jurisdictions with this provision use the word "conviction", but also use the descriptive word "crime" without distinguishing between major and minor offenses. Some provisions use the word "violation" which could be construed as including an arrest.

Judicial Interpretations

The above provisions take an added meaning when analyzing several typical cases which uphold the language and standards found in so many statutes. In Re Mosby's Appeal, 360 Mich. 186, 103 N.W. 2d 462 (1960) held that a dismissal "for cause" was valid even though the activity of the employee was not specifically proscribed by the statute. In this case the appellant had, when applying for his position ten years before, failed to reveal a felony conviction. On this basis he was discharged. There was no finding that he had performed unsatisfactorily during these 10 years. The court held that his dismissal was valid on the basis of an "omnibus clause" in the rules:

> "The following are declared to be causes for suspension, demotion or removal of any employee, though charges may be based upon causes other than those herein enumerated . . .

In the case of Sumeracki v. County of Wayne, 354 Mich. 377, 92 N.W. 2d 325 (1958) the court held that a suspension of an employee charged with a criminal offense was valid even though the charges were subsequently dismissed. The court declared:

> "However harsh the present rule may be, all were cognizant of it when they started work. In any case such rules reflect an awareness that public policy may exclude not only a convicted felon from civil service employment, but also one accused of a felony."

Statutes Authorizing the Hiring of Individuals with Records

Only a few jurisdictions have enunciated a policy of not automatically excluding applicants with criminal records. Md. Ann. Code §64A-19 1957 (Supp. 1970) declares that such persons, if otherwise qualified, shall not be rendered ineligible solely by reason of the conviction. The hiring authority is expressly given permission to consider the conviction in making his final determination.

Mass. Gen. Law Ann. §31-17 1966 (Supp. 1971) provides that no person convicted of other than enumerated minor crimes, such as parking offenses, may be appointed or employed within one year of his conviction. The Personnel Director is allowed to appoint persons within a year of conviction where their offenses are comparatively minor, such as where the individual is fined less than $100 or sentenced to less than six months. Massachusetts also provides in §31-13 that applicants do not have to include any adjudications occurring before the applicants seventeenth birthday.

N.J. Stat. Ann. §11:9-6, 1960 (Supp. 1970) indicates that an individual who would otherwise be excluded, because of false statements in his application, dismissal from public service, or having been "guilty" of a crime, may be employed "if it appears" that the individual "has achieved a degree of rehabilitation that indicates that his or her employment would not be incompatible with the welfare of society and the aims and objectives to be accomplished by the agency . . . . "

The most explicit statute is found in Ill. Ann. Stat. §127-63b108b.1, 1967 (Supp. 1971), which states: "No person with a record of misdemeanor convictions except [enumerated crimes], or arrested for any cause but not convicted thereon shall be disqualified from taking such examinations or subsequent appointment, unless the person is attempting to qualify for a position which would give him the powers of a peace officer . . . . " The enumerated offenses included sex offenses, firearm violations, obstruction of justice, resisting a peace officer, and other similar offenses.

Civil Service Rules and Regulations

Most states have promulgated civil service rules. Most often it is merely a set of practical guidelines embodying the policies or standards as established by the State's statutes. A comparison, state by state, of statutory policies with those evidenced by the rules found that seven states appear to have softened their position in the rules; only one appears to have ignored the state policy, and then only indirectly.

Alabama, Kentucky, Missouri, New Jersey, New Mexico, Tennessee, and West Virginia appear to place tighter control on discretion which might be exercised by a hiring authority in excluding applicants. In each case the state had an exclusionary provision which would permit, generally, the exclusion of a person deemed "unfit" without defining what factors of "fitness" might be considered.

The rules promulgated by the civil service in each case eliminated that wording, generally adding a more detailed provision as to what would authorize exclusion, such as conviction of a felony or crime of moral turpitude or infamous or notoriously disgraceful conduct. Kentucky also improved its standards for firing by eliminating a provision which provides for firing an employee without specifying standards and adding a provision that an employee could be fired for misstatements in his application.

Indiana's rules do not appear to carry out in full statutory requirements. Indiana Ann. Stats. 60-1335 requires as a condition precedent to firing an employee, a statement of the reasons therefore in writing. The rules, however, at Section 12-3(A) state, "An appointing authority may dismiss a regular employee and terminate his employment immediately, by presenting the employee with a written notice of suspension without pay pending dismissal ten days following." There is no requirement within the section on dismissal requiring that the employee be given a statement in writing of the reasons for his dismissal.

Several jurisdictions have promulgated rules and regulations which provide relatively exacting guidelines. For example, Nevada provides that persons convicted of crimes against property shall not be considered for positions involving merchandise; persons convicted of crimes against persons will not be considered for positions involving the care or custody of individuals; persons convicted of crimes involving "violations of trust (such as forgery or embezzlement)" will not be considered for fiscally related positions; and persons convicted of serious traffic infractions shall not be considered for positions requiring vehicle operations.

The approach used by St. Paul, Minnesota in their regulations is based upon a time-delay factor. For example, persons convicted of a felony may not be admitted to an examination within five years; after a second conviction, ten years, etc. For misdemeanors the delay is six months for the first offense in any one year, a one year delay for two offenses in any one year, and a three-year delay for three or more offenses within any five-year period.

Findings and Recommendations

1. Finding -- There are great variances in civil service statutes. Many statutes cite criteria and standards which in reality offer almost no guidelines to civil service commissions and personnel directors. Many statutes use words such as merit, ability, or fitness as guidelines. On the other hand, exclusionary provisions use such words as "unfit", "infamous", and "non law-abiding". Yet other statutes specifically exclude individuals who are arrested or convicted of crimes.

Very few jurisdictions follow a statutory policy of not excluding applicants with criminal records and in these few jurisdictions the statutes provide slight amelioration of the affect of a criminal conviction on a job applicant's chances of obtaining civil service employment. They either speak in weak terms of not excluding such individuals or provide numerous exceptions to the non-exclusionary rule. Most such statutes make it clear that the crime may be considered by the personnel director or the hiring agency.

Recommendation -- The Institute believes that a more positive expression of policy should be contained in the basic civil service statute for the state, and that where state law governs hiring practices in local jurisdictions, such a statute should similarly apply. The actual wording of a statute should be preceded by a statutory preamble in which the legislature finds that a policy of rehabilitating offenders best protects society by preventing future crime, and that to be consistent with efforts at rehabilitation government should be a source of employment.

Following this expression of legislative intent there should be an express provision which provides that no crime is an automatic bar to obtaining employment with government. While discretion must be left with the personnel department or hiring agency, as the case may be, and a crime which has not been expunged should be considered along with many other factors, the statute should make clear that it is the policy of the state to encourage applications of persons who have criminal records.

The Institute is proposing a model civil service criminal record statute, recognizing that variations may be necessary in different jurisdictions. We are not attempting to draft a model set of rules and regulations. We do recommend that appropriate organizations such as the Council of State Governments, National League of Cities, National Association of Counties, National Civil Service League, International City Managers Association, and similar groups attempt to draft model rules and regulations consonant with the model statute the Institute is proposing.

2. Finding -- A number of states have promulgated civil service rules, generally in accordance with the statutes creating the civil service organization. As previously pointed out, however, not all states adhere strictly to the letter and spirit of the law in their jurisdiction.

Recommendation -- The Institute believes that the promulgation of clear rules and regulations and their wide distribution, accompanied by discussions of their meaning, is a high priority recommendation. Nothing could be more destructive than a policy which is not implemented because of a communication failure, or a lack of policy which results in uneven and unequal implementation of state law. In either case how a person with a record is treated in the job screening process could well depend on circumstances over which he has no control.

The rules and regulations should clearly reflect the requirements of the statute, and the rulemaking body should, in amplifying upon a statute, give the most favorable interpretation to the meaning of the statute. This in fact has apparently occurred in seven states.

The rules and regulations should be distributed and explained on a periodic basis to all who have any responsibility for hiring and should also be made available to job applicants. As pointed out in Chapter 7, where site visits are discussed, some jurisdictions have no written policies concerning the hiring of offenders, and in one case where such a policy was in existence, it apparently had not been made available to hiring authorities or job applicants.

Model Civil Service Criminal Conviction Statute*

Section 1. The [name of legislature] finds that the public is best protected when criminal offenders are rehabilitated and returned to society prepared to take their places as productive citizens. The [name of legislature] also finds that the ability of returned offenders to find meaningful employment is directly related to their normal functioning in the community. It is therefore the policy of [name of state] to encourage all employers to give favorable consideration to providing jobs to qualified individuals, including those who may have criminal conviction records.

Section 2. No person with a criminal conviction record shall be disqualified from taking open competitive examinations to test the relative fitness of applicants for the respective positions. Persons with criminal conviction records shall be entitled to the benefit of all rules and regulations pertaining to the grading and processing of job applications which are accorded to other applicants. In considering persons with criminal conviction records who have applied for employment the [hiring official] shall consider the following:

---

* The civil service conviction statute does not grant relief to persons arrested but not convicted. Some states have statutes or rules providing some form of relief for such persons. The Institute anticipates this model statute being coupled with the recommendation that no arrest record shall be released for purposes relating to employment, license, bonding, or any civil right or privilege. (Chapter 8) This would thus deny civil service access to such records. Should an arrest record statute not be adopted, then civil service provisions should include standards providing for employment of persons arrested but not convicted.

a. The nature of the crime and its relationship to the job for which the person has applied;

b. Information pertaining to the degree of rehabilitation of the convicted person; and

c. The time elapsed since the conviction.

Chapter 4

Licensing and a Criminal Record

This study was not originally intended to examine licensing statutes and their application. But it became obvious that this was an important employment sector in which state government played a major role through statutory guidelines and various occupational boards and commissions. The following material is introductory to the problem which merits detailed examination and analysis. As part of a recent grant to the American Bar Association a sub-grant has been made to the Georgetown Institute of Criminal Law and Procedure to conduct an extensive survey of licensing statutes and recommend model legislation in this area.

That crime and violence are often related to unemployment is well established. For example, the National Advisory Commission on Civil Disorders found significant indication that those who were unemployed were more likely to participate in riots than those with employment.[1/] The same was found with those employed intermittently, or in low status positions, or in unskilled jobs--regarded as being below their level of education and ability.[2/]

The relationship between licensing and employment is significant; the 1960 Census found that more than 7 million people were working in occupations that were licensed in one or another jurisdiction[3/] and that altogether there are approximately 2,800 statutory provisions requiring occupational licenses.[4/] The charts on pages 54-55 give some indication where these requirements exist, both geographically and occupationally. How seriously the existence of a criminal record affects one's potential for being licensed cannot be accurately determined without an initial detailed examination of the statutes, followed by a look at administrative practices. The data compiled here briefly highlights some factors in the problem upon which future studies could expand.

Appendix E lists major occupations with the number of states requiring a license for that occupation. The data is approximate due to the lack of uniformity in occupational classifications from state to state; nevertheless, there are well over 4000 occupation licenses required in one state or another.[5/]

One survey of statutes found that as many as half may be affected by the existence of a criminal record. Over 1050 licenses required "Good Moral Character" as a condition precedent. This requirement, which is often established without any guidelines of what constitutes such evidence, has been reported as having an adverse effect on many potential practitioners, especially the urban poor.[6/]

A "felony" record was clearly enumerated as being grounds for denial of a license in 225 occupations, and a record of felony with moral turpitude in another 27. A "misdemeanor" record affected 15 occupations while a misdemeanor record involving moral turpitude affected 24. A "crime" record involving moral turpitude was sufficient in 198 occupations and in 116 an enumerated crime was specified. It is interesting to note that for all offense categories (excepting the requirement of "good moral character") nearly twice as many jurisdictions prohibit a renewal of the license than initially deny it.

Appendix E indicates that there is a lack of substantial uniformity among the states for the requirements necessary for being licensed. Furthermore, many statutes are vaguely worded. They do not always specify whether a conviction or merely an arrest is sufficient to restrict the license, and others are less than fully descriptive of what crime or crimes are considered relevant to the occupation in question.

Rehabilitation of criminal offenders is related to their success in obtaining and retaining satisfactory employment. Juveniles as well as adults are affected. The President's Commission on Law Enforcement and the Administration of Justice reported that, "The delinquency label may preclude membership in labor unions or participation in apprenticeship training. Licensing requirements for some occupations, such as barbering and food service, may act as a bar to entry for those with a record of delinquent conduct."[7/] Where barriers are unrealistic, unnecessary, or where they bear no relation to the job in question, ex-offenders become increasingly bitter and may return to crime, or resort to alcohol or drugs. Because of this, the Commission recommended the reduction of "barriers to employment posed by discrimination, the misuse of criminal records, and maintenance of rigid job qualifications."[8/]

Another problem inherent in the widespread diversity of occupational licensing and the lack of uniformity of treatment of criminal records is that mobility of the individual is affected. Only one out of 25 occupations is licensed in all 50 states.[9/] While those states which license the same occupation generally provide for licensing out-of-state applicants by endorsement, reciprocity, waiver, or examination, the lack of uniformity in qualifications and procedures in effect further restricts the ease with which a licensed practitioner may relocate.[10/] "The disparity between entrance requirements for the same occupation alone could seriously limit the freedom of licenses to practice their occupations in various parts of the country."[11/] In effect, then, the individual with a skill and criminal record might find it virtually impossible to determine what he might practice and where. Unless he had substantial resources for retraining, research, or experimental relocating, he might find employment unobtainable. Rehabilitation under such circumstances could be impossible.

Another problem, which can only be briefly touched upon, concerns vocational training in correctional institutions. Most institutions have wholly inadequate programs for equipping inmates with any skills, many being merely of a make-work nature or providing a service only utilized by the state, such as making license plates. Where a potentially useful program is established, licensing problems may interfere. For example, it was reported that hundreds of prisoners of the New York City Department of Corrections have been trained as truck drivers, plumbers, electricians and bakery workers. Yet the Department of Motor Vehicles sometimes denies licenses for long waiting periods and many of the unions representing the plumbers, electricians and bakery workers exclude ex-convicts.[12]

This brief sketch indicates that licensing procedures and requirements need to be more thoroughly studied as to their effect upon rehabilitation of persons with criminal records. Not only do ex-convicts need assurance of freedom from unreasonable discrimination, but persons with arrest records who have never been found guilty of a crime many need similar assurance.

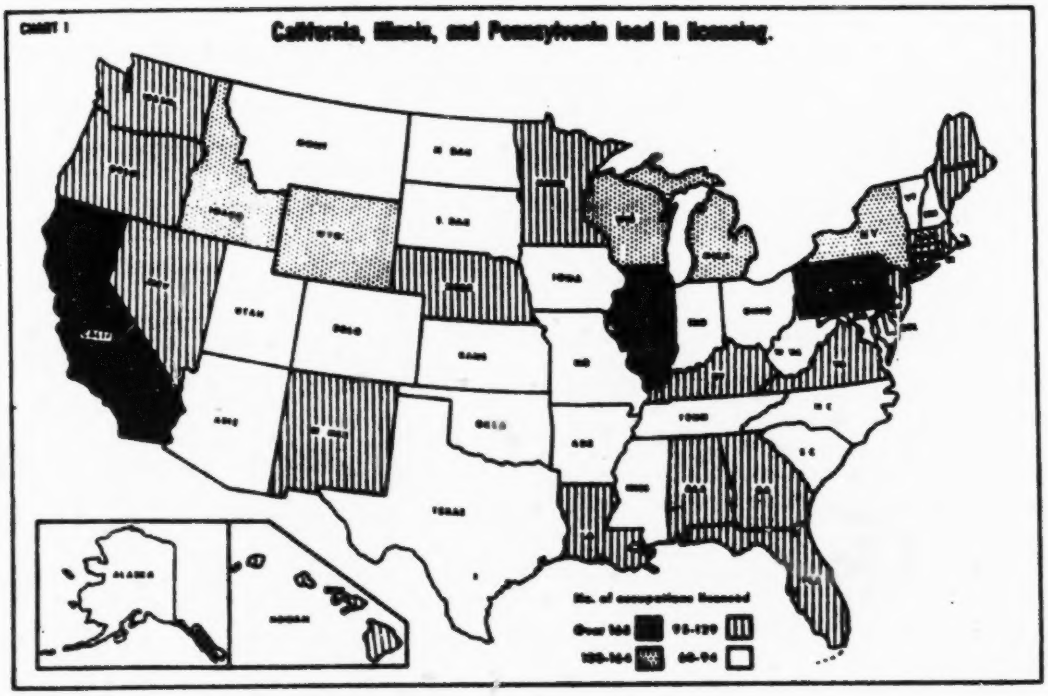
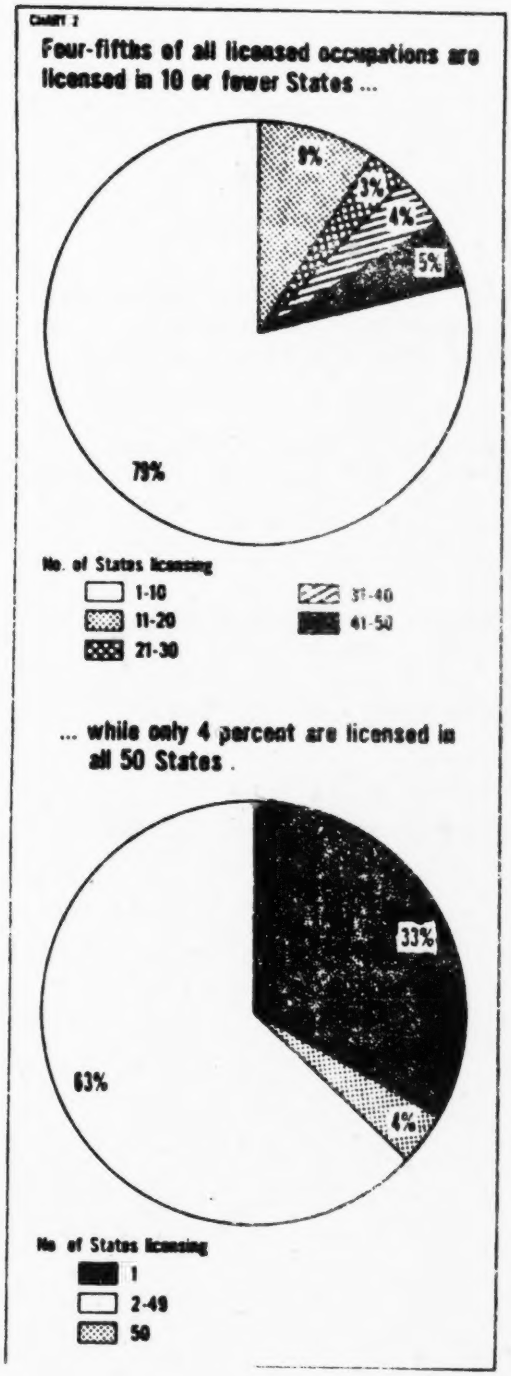


CHART 1
California, Illinois, and Pennsylvania lead in licensing.
UTAH
IOWA
TEXAS
No. of occupations licensed

This chart is reprinted with permission of the U.S. Department of Labor from Manpower Research Monograph No. 11, Occupational Licensing and the Supply of Nonprofessional Manpower at 2 (1969)



This chart is reprinted with permission of the U.S. Department of Labor from Manpower Research Monograph No. 11, *Occupational Licensing and the Supply of Nonprofessional Manpower* at 10 (1969).

Footnotes

1/ Report, pp. 75-76.

2/ Idid., pp. 231-232

3/ U.S. Census of Populations - 1960, Detailed Characteristics, U.S. Summary (Washington: U.S. Department of Commerce, Bureau of the Census, 1960), table 202, and State volumes, tables 120.

4/ Occupational Licensing and the Supply of Nonprofessional Manpower, Manpower Research Monograph No. 11, U.S. Department of Labor, 1969.

5/ See Appendix E

6/ Occupational Licensing and the Supply of Nonprofessional Manpower, supra, p. 6.

7/ The Challenge of Crime in a Free Society, p. 75, 1967.

8/ Id. p. 77.

9/ Occupational Licensing and the Supply of Nonprofessional Manpower, supra p. 9.

10/ Id.

11/ Id.

12/ New York Daily News, 9 July 1970, p. 5.

Chapter 5

Annullment and Expungement of Criminal Conviction

Introduction

As we have seen, barriers confront the ex-offender seeking employment. Some of these barriers involve governmental action, such as employment guidelines (or lack thereof) or licensing statutes. Other hurdles result from attitudes of private employers who prefer not to hire ex-offenders and from employees who prefer not to work with ex-offenders.[1/]

It is abundantly clear that a jurisdiction's treament of records can have a significant effect upon an ex-offender's employment opportunities, and it is equally clear that jurisdictions vary considerably in their policies and practices regarding juvenile, arrest and conviction records. Since many persons convicted of crime are not incarcerated and since virtually all those incarcerated are released, today's convicted criminal will be tomorrow's jobseeker. Because of the importance of the legal and social disabilities flowing from a criminal conviction, much attention has been devoted to restoring the civil rights of one convicted of crime as well as redefining the status of the ex-offender.

Every state has some method by which the ex-offender may secure the restoration of some of his rights. Some form of legislative or executive pardon is available in most states, but pardons are of limited value. In some states only the franchise is restored, and in others, where all formal civil rights are restored, a pardon has little, if any, effect upon the social sitgma attaching to an ex-offender. The process by which a pardon is received is often a cumbersome one,[2/] and the legal effects of a pardon are severely limited.[3/] For these reasons, pardon applications are infrequent. One survey indicated that in New York in 1954 (where several thousand persons were committed) 176 applications were received and 67 pardons granted. North Dakota, North Carolina, and Ohio also reported a small number of applications for the restoration of rights.[4/*]

In view of these difficulties, attention has centered upon expungement as a remedy not only to restore the civil rights of ex-offenders but also to remove other stigma resulting from one's status as an ex-offender. During the last two decades, several groups considering the problems of ex-offenders have recommended expungement of convictions, but these suggestions have left many unanswered questions.

Perhaps the earliest suggestion of this kind came from the Second National Conference on Parole in 1956. The Conference, co-sponsored by the United States Board of Parole and the National Probation and Parole Association, considered various ways of improving parole and enhancing the parolee's chance of successfully returning to society. The parolee's loss of civil rights and its effect upon his rehabilitation were considered, and the Conference concluded:

> "The expunging of a criminal record should be authorized on a discretionary basis. The court of disposition should be empowered to expunge the record of conviction and disposition through an order by which the individual shall be deemed not to have been convicted. Such action may be taken at the point

---

* See p. 125 for a discussion of Minnesota practices.

> of discharge from suspended sentence, probation, or the institution upon expiration of a term of commitment. When such action is taken the civil and political rights of the offender are restored." 5/

The desirability of expungement statutes has been recognized by the drafters of the American Law Institute's Model Penal Code. In 1961 the Institute adopted a model section allowing the sentencing court, at its discretion, to enter an order vacating a conviction. The court could exercise its authority either when an offender "has been discharged from probation or parole before the expiration of the maximum term thereof" or "when a defendant has fully satisfied the sentence and has since led a law-abiding life for at least five years." 6/

The Model Code, like the recommendation of the National Conference on Parole, was silent about procedures for obtaining such an order, procedures by which such a judgment would be vacated, the legal effect of such an order, and the whole range of procedural and mechanical problems presented by this unusual device. The usual commentaries which arehelpful in explaining other Model Code provisions were not included, and there is no evidence of significant debate about the questions raised by expungement. The Code is specific only as to several limitations on the effects of expungment. Most of these restrictions involve the use of a conviction in court proceedings (to impeach the defendant as a witness, to sentence him if he is subsequently convicted of another crime, or to prove the commission of the crime). 7/ Also, and most important for this report, such an order only operates prospectively and does not require the restoration of any forfeited employment; 8/ as for future employment, an expungement order "does not justify a defendant in stating that he has not been convicted of a crime, unless he also calls attention to the order." 9/

In 1962 the National Council on Crime and Delinquency (formerly the National Probation and Parole Association) promulgated the following act authorizing courts to annul conviction records:

> "The court in which a conviction of crime has been had may, at the time of discharge of a convicted person from its control or upon his discharge from imprisonment or parole, or at any time thereafter, enter an order annulling, canceling, and rescinding the record of conviction and disposition, when in the opinion of the court the order would assist in rehabilitation and be consistent with the public welfare. Upon the entry of such order the person against whom the conviction had been entered shall be restored to all civil rights lost or suspended by virtue of the arrest, conviction, or sentence, unless otherwise provided in the order, and shall be treated in all respects as not having been convicted, except that upon conviction of any subsequent crime the prior conviction may be considered by the court in determining the sentence to be imposed.
>
> In any application for employment, license, or other civil right or privilege, or any appearance as a witness, a person may be questioned about previous criminal record only in language such as the following: 'Have you ever been arrested for convicted of a crime which has not been annulled by a court.?'
>
> Upon entry of the order of annulment of conviction, the court shall issue to the person in whose favor the order has been entered a certificate stating that his bahavior after conviction has warranted the issuance of the order, and that its effect is to annul, cancel, and rescind the record of conviction and disposition.
>
> Nothing in this act shall affect any right of the offender to appeal from his conviction or to rely on it in bar of any subsequent proceedings for the same offense." 10/

This act allows the sentencing judge the discretion to grant or deny an order expunging a conviction, and presumably the ex-offender does not necessarily have the burden of applying for such an order. The only standards guiding the court's decision are whether the order "would assist in rehabilitation and be consistent with the public welfare." The order restores to the ex-offender all civil rights, but, if any subsequent conviction occurs, the earlier annulled conviction may be considered in sentencing.

In applications for employment or licenses, the Act attempts to protect an ex-offender with an annulled conviction, and its approach is far better than that of the *Model Penal Code*, but the good intentions of the Act are not translated in any tangible way into practice. The lack of specific processes for annulment and any means of enforcing its pious declarations are serious deficiencies. Moreover, the Act operates only after conviction and actually leads to more protection for one convicted than for one arrested and not convicted. In any event, the effect of annulment upon arrest records is not at all clear.

Most recently, the American Bar Association (ABA) Project on Standards for Criminal Justice in its *Standards Relating to Probation* recommended the following standard:

> "*Every jurisdiction should have a method by which the collateral effects of a criminal record can be avoided or mitigated following the successful completion of a term on probation and during its service*." 11/

Stressing the irrational and burdensome disabilities placed upon ex-offenders, the accompanying commentary recommended judicial authority to affect the collateral disabilities resulting from conviction. As for the numerous specific problems raised by an expungement statute, it concluded:

> "The Advisory Committee is not as concerned with the form which such statutes take as it is with the principle that flexibility should be built into the system and that *effective ways should be devised to mitigate the scarlet letter effect of a conviction once the offender has satisfactorily adjusted*." 12/ (emphasis added)

Perhaps nowhere has the problem of an ex-convict been more graphically described than in a recent book written by four inmates of the Indiana State Penitentiary. Griswold, Misenheimer, Powers and Tromanhauser, An Eye For An Eye, (1970). In Chapter 21, titled The Ex-Con, the problems they describe in obtaining and holding jobs point up more vividly than any scholarly analysis the need for an expunging statute such as the one recommended by this study.*

State Annullment and Expunging Statutes**

Existing state expungement statutes take various forms but are generally cumbersome and inadequate. The most comprehensive state expungement scheme exists in California, where several statutory provisions allow some form of expungement.[13/] The California statutes and their inadequacies have been reviewed exhaustively, and it is apparent that these statutes provide tedious procedures and are of limited scope and effect.[14/] They have been narrowly construed by judges balancing the rehabilitative effects of expungement against the need to protect the public from those with expunged convictions. When the debate is framed in these terms the need for public protection almost always seems paramount.

One statute (Cal. Penal Code §1203.45) allows an order sealing "the record of conviction and other official records in the case", and provides that the "conviction, arrest or other proceeding shall be deemed not to have occurred, and the petitioner may answer accordingly any question relating to their occurrence." The specificity of this statute is commendable, but its scope is severely limited. It applies only to misdemeanants under twenty-one years old, who must petition the court for such an order. It is expressly inapplicable to narcotics offenses, traffic violations, and various sex offenses, and its relationship to other California statutes is unclear.

---

* See Appendix F for a copy of Chapter 21.

** See Appendix G for comparison of state annullment and expunging statutes.

Another California statute (Cal. Penal Code §1203.4) applies only to those persons completing probation. It allows these ex-offenders to withdraw guilty pleas (or have the verdict of guilty set aside if they originally pleaded not guilty). The court "shall thereupon dismiss the accusations or information", and the defendant is thereafter "released from all penalties and disabilities resulting from the offense of crime." This statute, though mandatory, has been judicially and legislatively circumscribed and is of limited applicability.[15/] Nevada has a virtually identical statute which has not been interpreted by the courts.[16/]

North Dakota has a similar statute allowing release from all disabilities of a conviction after the offender has successfully completed probation. In one respect, it is procedurally clearer than similar statutes. It limits access to court records in such cases to the clerk of the court, the judges, the juvenile commissioner, and the state's attorney. "Others may examine such records and papers only upon the written order of one of the district judges."[17/]

A similar statutory scheme exists in Delaware. If the offender complies with the terms of his probation, "the plea or verdict of guilty entered by or recorded against such offender shall be stricken from the records of the court.[18/] A statute of this sort is commendable, but it applies only to probationers. Although the statute uses the mandatory "shall", it presents no procedures by which a probationer can petition for such relief. It apparently applies only to court records, and no sealing procedures are enumerated. Unlike the California statute, there are no cases interpreting the statute.

Washington and Utah have statutes allowing favorable treatment of successful probationers, and each statute has been subject to judicial interpretation. Washington's statute is virtually identical in wording to California's (§1203.4), but it sets a discretionary rather than mandatory procedure ("the court may thereupon dismiss the information").[19] Opinions of Washington's Attorney General have held for example, that the statute applies to convicted felons who wish to run for elected state or county office,[20] but the statute's removal of "all penalties and disabilities" does not preclude the consideration of such a conviction in later sentencing the offender to a mandatory minimum sentence.[21] In a recent case the Supreme Court of Washington upheld the election of a county sheriff whose earlier conviction had been annulled under this statute.[22]

Utah's statute authorizes the court to place any defendant on probation, and, if the defendant complies with the conditions of his probation, "the court may if it be compatible with the public interest either upon motion of the district attorney or of its own motion terminate the sentence or set aside the plea of guilty or conviction of the defendant, and dismiss the action and discharge the defendant."[23] The Supreme Court of Utah has viewed the statute as "enacted for the purpose of permitting the court under unusual circumstances and for good cause to expunge the record of crime."[24] Utah's courts, like most state courts, have not explored the meaning of "good cause", "unusual circumstances", or any of the varied problems in defining expungement processes.

Texas has two statutory provisions which provide for a form of expungement. One section authorizes the court upon the termination of probation to set aside the conviction and release the defendant from all future penalties and disabilities.[25]

Another provision applicable only to misdemeanants provides:

> (a) When the period and terms of a probation have been satisfactorily completed, the court shall, upon its own motion, discharge him from probation and enter an order in the minutes of the court setting aside the finding of guilty and dismissing the accusation or complaint and the information or indictment against the probationer.
>
> (b) After the case against the probationer is dismissed by the court, his finding of guilty may not be considered for any purpose except to determine his entitlement to a future probation under this Act, or any other probation Act.

This provision,[26] however definitive its effect, applies only to defendants who apply in writing to the court for such treatment. These defendants must have never been convicted of a felony or a misdemeanor for which a jail term could be imposed, and they must not have been granted probation during the preceding five years.[27] This statute's narrow applicability and procedural difficulties are significant defects.

The Wyoming statute provides for parole before sentence. It is applicable to most felonies where there have been no previous felony convictions. The judge may consider whether it is a first offense, "the extent of moral turpitude involved," and the reputation of the defendant; he may then "parole" the defendant for as long as five years. After one year or any time thereafter, the court "shall have the power in its discretion" to terminate the parole, discharge the defendant, "and annul such verdict or plea of guilty."[28] No procedures are provided, no cases interpret the statute, and there is no evidence of its use.

New Jersey permits the court to order "the clerk of such court to expunge from the records all evidence of said conviction." Also, "the person against whom such conviction was entered shall be forthwith thereafter relieved from such disabilities as may have heretofore existed by reason thereof." The statute apparently contemplates the full restoration of civil rights, but it applies only when the original sentence was suspended or was a fine of $1,000 or less. The petitioner must have no subsequent conviction and can apply for this relief after ten years from the date of his conviction. The county prosecutor and police chief are notified of all such petitions and may object. The process is expressly not available to those convicted of treason, anarchy, all capital cases, kidnapping, perjury, carrying concealed or deadly weapons, rape, seduction, arson, robbery, or burglary.[29/]

One needs no statistical survey to conclude that the New Jersey statute is used sparingly. It has, however, been subject to interpretation and limitation. Several Attorney General Opinions have stated that an order under this statute does not have the attributes of a full pardon. Cases have also limited its effectiveness;[30/] a recent case called for its "revision and clarification".[31/]

Michigan's recent (1965) statute applies only to non-capital offenses committed before the defendant's twenty-first birthday and does not apply to persons committing more than one offense. Five years after the conviction, one may petition for an order "setting aside the conviction". The prosecutor may contest the motion, and the court may require the petitioner to file supporting affidavits. "If the court determines that the circumstances and behavior of the applicant from the date of his conviction to the filing of the motion warrant setting aside the conviction, it may, in its discretion, enter an order for same."[32] The effect of such an order is unclear, but the statute states that, upon the entry of such an order, "the applicant, for purposes of the law, shall be deemed not to have been previously convicted."[33]

Minnesota provides for expungement by administrative action of the State Board of Pardons. Any first offender may, upon completion of the sentence, petition the Board for a "pardon extraordinary." If the Board finds that he "is of good character and reputation", it may grant such a pardon. As for its effect, "[s]uch pardon extraordinary, when granted, shall have the effect of restoring such person to all civil rights, and shall have the effect of setting aside the conviction and nullifying the same and of purging such person thereof and such person shall never thereafter be required to disclose the conviction at any time or place other than in a judicial proceeding thereafter instituted."[34]

The Minnesota statute is broad in scope, covering all first offenders and not expressly excluding any crimes. It also attempts to have vast effect by restoring "all civil rights" and by implicitly sanctioning non-disclosure of such conviction on all job applications. The statute, like others, does not consider arrest records; and its administrative mechanism may not be effective. But if implemented and expanded, it could be an effective tool for ex-offenders.

Findings and Recommendations*

1. Finding -- Many expungement statutes provide no mechanism by which a conviction may be expunged thus they often have been found to be not effective. Procedures may be difficult, judicial authority may be discretionary and rarely exercised, and few ex-offenders may know of a statute providing that they must petition for expungement. Most statutes apply only in limited cases and some exclude a variety of listed offenses while others apply only to those completing probation or receiving suspended sentences.

Recommendation -- It is clear that as to criminal conviction, there is still a vast need for some means by which the debilitating effect of a criminal record may be lessened. An effective state expungement practice is by no means the only method by which ex-offenders may be aided, but changes in this area are sorely needed.

Some have suggested that because existing expunging statutes do not work, and because public attitudes are so important, that statutory reform is not a viable method of removing obstacles to employment.[35] The Institute recognizes the importance of public attitudes and rehabilitative efforts, and is not suggesting that the sole answer is statutory and administrative reform. But a proper legal and administrative structure is a requirement before other necessary steps can be effective. It does little good to train an individual for an occupation if a license to practice cannot be obtained or employers are unwilling to hire ex-offenders. In the latter case legislation restricting the use of criminal records when a job is at stake will at least prevent the legal structure from obstructing bona fide efforts at obtaining employment.

---

* See Chapter 2, Juvenile Policies and their effectiveness for a discussion of juvenile problems in this area and the draft of a model use of juvenile records statute. See also Chapter 3 Civil Service Statutes and Rules for discussion the draft of a Model Civil Service Conviction Statute.

2. Finding -- Existing expunging statutes generally do not consider whether the procedure should be automatic or discretionary, mandatory or permissive, whether ex-offenders are to be notified about expungement and its affect, or whether employers are to be prevented from inquiring about expunged convictions. There is little evidence that expungement has effectively aided the ex-offender.

Recommendation -- Some guidelines may be suggested. Most statutes provide that an ex-offender must petition for relief, which may be granted at the court's discretion. This procedure clearly limits the utility of this remedy to those ex-offenders who are aware of it, articulate enough to petition for it, and energetic enough to persevere through courtroom procedures. (Such a remedy may also be limited to those who can afford an attorney.) These defendants are least likely to need expungement and are more likely to overcome the disabilities of a conviction record.

There is a middle ground between automatic expungement and proceedings which the ex-offender must initiate, depending solely upon the ex-offender's initiative. Formal notice of the termination of probation or parole could be accompanied by a notice that the probationer or parolee could petition for expungement. Specific directions could be included in the notice.[36/] Where the relief to be granted pertains to persons arrested but not convicted, it could entail giving to them a formal printed notice of their rights to seek expungement or sealing of their criminal record.

3. Finding -- Probation and parole officers are rarely involved in the expungement process.

Recommendation -- Should the probationer not utilize the expungement procedure, petitions could be authorized from probation and parole officers as a back-up measure. These officers could, with a minimum of difficulty, set regular schedules as to when they would consider filing such petitions. For example, they might consider filing such petitions one year after the completion of probation or parole and two years after mandatory release from imprisonment for a felony.[37] The Institute has opted for authorizing proceedings immediately after discharge from probation or parole and released from imprisonment on the grounds that legal obstacles to work should not slow up the rehabilitative process.

Vesting this authority in probation and parole officers could well make expungement an integral part, in fact the "graduation ceremony" of the rehabilitative process, and ex-offenders would be more likely to be made aware of expungement. Also, these officers ideally would have the resources for the social investigation demanded by courts.

4. Finding -- Most statutes do not provide meaningful guidelines for determining when expungement should occur.

Recommendation -- Guidelines which could be employed might include lack of subsequent convictions, no pending criminal proceedings, and the usual indices of efforts at rehabilitation.

5. Finding -- Most expungement statutes are unclear as to the meaning and effect of expungement.

Recommendation -- Most existing, Expungement laws do not provide for the destruction and obliteration of court and police records because there are many uses for such records.[38] If expungement statutes limit the use of criminal records, destruction or obliteration becomes unnecessary. The statute could provide that when the conviction is annulled or expunged all civil rights are restored to the petitioner. It could further provide that license and job application forms may ask only about convictions which have not been expunged. Restricting such questioning may be a far more effective remedy than placing upon the job seeker the burden of concealing a part of his past.

6. Finding -- Most expungement statutes do not explicitly describe how courts and police departments are to handle expunged records.

Recommendation -- Provisions should require courts and police departments to seal expunged records and prohibit their divulgence to any public or private employer.* Under such a provision only a court hearing a criminal case involving that particular ex-offender's involvement in a subsequent crime or a police department investigating a crime could gain access.

---

* Responses to any inquiries should not be different from those made about persons who have no criminal records.

Expungement - Footnotes

1/ See e.g., Wyle, The Employment of Released Offenders, 25 Probation, Oct., 1946; Harris, Changing Public Attitudes Toward Crime and Corrections, 32 Fed. Prob., Dec., 1968; Hannum, Problems of Getting Jobs for Parolees, 6 N.P.P.A.J., Jan., 1960; Note: Discrimination on the Basis of Arrest Record, 56 Cornell L. Rev. 470 (1971). See also Pownall, Employment Problems of Released Prisoners (1969), a report prepared for the Manpower Administration, U.S. Department of Labor.

2/ Rubin, The Law of Criminal Conviction 609 (1963).

3/ Id., 605-10.

4/ Id., 636-7.

5/ National Conference on Parole, Parole in Principle and Practice, 137-39 (1956).

6/ Model Penal Code, §306, 6(2)(Proposed Official Draft, 1962).

7/ Id., §306.6 (3),(b),(c),(d), and (e).

8/ Id., §306.6 (3)(a).

9/ Id., §306.6(d)(f).

10/ Annulment of a Conviction of Crime: A Model Act, 8 Crime and Delinquency 97, 100 (1962)

11/ American Bar Association Project on Standards for Criminal Justice, Standards Relating to Probation, §4.3, (Approved Draft, 1970).

12/ Id., p. 56.

13/ See e.g., Cal. Penal Code, §§1203.4-4(a), 1203.45 (West Supp., 1968).

14/ See e.g., Note, The Effect of Expungement on a Criminal Conviction, 40 S. Cal. L. Rev. 127 (1967); Booth, The Expungement Myth, 38 L.A. Bar Bull. 161 (1963); Comment, Criminal Records of Arrest and Conviction: Expungement from the General Public Access, 3 Cal. W.L. Rev. 121 (1967), Baum, Wiping Out a Criminal or Juvenile Record, 40 Cal. S.B.J. 816 (1969).

15/ Note, The Effect of Expungement on a Criminal Conviction, 40, S. Cal. L. Rev. 127, 133-143 (1967).

16/ New Rev. Stats. §176.225.

17/ N.D. Code §12-53-18 (1960).

18/ Del. Code, title II, §4321 (19 supp.).

19/ *Wash. Rev. Code* Ann. §9.95, 240

20/ Ops. Atty. Gen. 65-66, No. 66.

21/ Ops. Atty. Gen. 59-60 No. 50.

22/ Watsen v. Kaiser, 443 P.2d 843 (1968).

23/ *Utah Code Ann*. §77-35-17.

24/ State v. Schreiber, 245 P.2d 22, 224 (1952)

25/ *Tex. Code Crim. Proc. Ann*. §42,12(7)

26/ *Tex. Code Crim. Proc. Ann*. §42.13(7)

27/ *Tex. Code Crim. Proc. Ann*. §42.13(3)(a)(1-5).

28/ *Wyo. Comp. Stat*. §7-315 (1957).

29/ *N.J. Stat. Ann.* §2A:164-28 (1958).

30/ *See, e.g.*, Waterfront Commission of New York Harbor v. Pasquale, 65 N.J. Super. 498, 168 A, 2d 246 (1961); State v. Garland, 99 N.J. Super. 383, 240 A.2d 41 (1968).

31/ State v. Chelson, 104 N.Y. Super. 508, 511, 250 A.2d 445, ___ (1969).

32/ *Mich. Stat. Ann*. §28.1274 (101) (1969 Supp.).

33/ *Mich. Stat. Ann*. §28,1274 (102) (1969 Supp.).

34/ *Minn. Stat. Ann*. §683,02(2) (1969 Supp.).

35/ See Kogon and Loughery, *Sealing and Expungement of Criminal Records -- The Big Lie*, 61 J. Crim. L.C. & P.S. 378 (1970).

36/ *The Standards Relating to Probation* provide for formal notice of termination of probation. §§4.1. 4.2 and commentary at pp. 52-54. See note 11 *supra*.

37/ Mandatory release occurs when the term of imprisonment, less good time, requires the prisoner to be released. This usually means that parole had been considered but not granted.

38/ If there is a subsequent conviction the court should have the information as part of a presentence report. Police may use some of the information for investigating certain crimes where the method of operation (MO) is a key to solving the crime.

MODEL ANNULLMENT AND SEALING STATUTE*

Section 1. In all cases wherein a criminal conviction has been entered against any person, the person so convicted may petition the court wherein such conviction was entered for an order annulling and sealing the record of such conviction after termination of probation or parole supervision, or after final discharge or release from any term of imprisonment. He may present such petition in person, by an attorney, or by a probation or parole officer and the expenses coincident with this petition shall be borne by the state. The court shall grant such an order unless in the opinion of the court the order would not be consistent with the public interest. The court shall explicitly state in writing any reasons for not granting an order of annulment and sealing. A denial of such an order shall be appealable by the petitioner and the burden of proof for sustaining the denial shall lay upon the state.

Section 2. Departments of probation, parole or corrections exercising supervision or custody over any convicted person shall inform such person in writing of the completion of probation, parole or imprisonment, and the termination of supervision or custody. Where this person has not reached the age of legal majority a copy shall also be given to his parents, guardians, or others similarly situated. Information concerning annullment and sealing rights shall, in non-technical and clearly understandable language, be included in this written communication. If within two years, following termination of probation or parole and after final discharge from imprisonment or mandatory release, an order annulling and sealing the record of conviction has not been granted, and no subsequent criminal conviction has occurred, the court shall enter such an order on its own motion. The court shall attempt to notify the person whose record has been annulled and sealed of this motion and its effect on his legal status.

---

* The expungement statute does not grant relief to persons arrested but not convicted. Several states have statutes providing some form of relief for such persons. The Institute anticipates this model statute being coupled with the recommendation that no arrest record shall be released for purposes relating to employment, license, bonding, or any civil right or privilege (Chapter 8). Should an arrest record statute not be adopted, then expungement provisions should include providing relief for persons arrested but not convicted.

Section 3. Upon the entry of such an order, petitioner shall be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted. Provided that in any subsequent prosecution of such defendant, such prior conviction shall have the same effect as if it had not been annulled. Nothing in this act shall affect any right of the offender to appeal from his conviction or to rely on it in bar of any subsequent proceedings for the same offense.

Section 4. Upon granting of the motion to annul the petitioner's conviction the court shall order the court records physically sealed and removed to a separate location and maintained in a confidential status. The court shall notify local and state law enforcement agencies [of its local jurisdiction] and the Federal Bureau of Investigation of the order annulling and sealing the conviction. This notification shall direct these agencies not to divulge and release information about the conviction except as otherwise provided in this Act. Upon receipt of this notification, these agencies shall take whatever action is necessary to ensure compliance with this order and shall then notify the court that action has been taken. The court shall supervise this action and response and may hold in contempt of court anyone failing to abide by its order. Except under the following circumstances the court's motion and receipt of such a notice shall thereafter prohibit the court and law enforcement agencies from divulging the record of conviction or fact of annulling and sealing.

(a) inquiries received from another court of law;

(b) inquiries from an agency preparing a presentence report for another court;

(c) inquiries from law enforcement agencies where the request for information is related to the investigation of a crime or a position within that agency; and

(d) inquiries from an agency considering the person for a position immediately and directly affecting the national security.

information about the annulled conviction may not otherwise be released when the request for information is related to an application for employment, license, bonding or any civil right or privilege. Responses to such inquiries shall not be different from responses made about persons who have no criminal records.

Section 5. In any application, interview, or other form of evaluation process for employment, license, bonding or any civil right or privilege, with only the exceptions enumerated in section 4, a person may be questioned about previous conviction of crime only in language such as the following: "Have you ever been convicted of a crime which has not been annulled or sealed by a court?"

Chapter 6

National Survey of Hiring Practices and Policies

Introduction

How government agencies deal with job applicants and with criminal records is approached at different levels in this study. The Institute has observed what some jurisdictions do; asked many others to report what they do; and analyzed statutes, rules and job applications.

Because all practices could not be observed nor could all jurisdictions be visited inquiries were made via mail questionnaires. That is, the agencies were asked to report their practices. Clearly this method may not produce all the data. But, equally clearly, its necessity was dictated by the scope of the project. This chapter deals with the practices reported to us through two questionnaires (police and corrections, and civil service).*

Response to the Questionnaires

A total of 654 jurisdictions were sent an initial inquiry requesting information about their hiring practices. On the basis of the returns from this initial probe and the examination of statutes and rules, two questionnaires were designed; one for use with police and correctional agencies (the PC questionnaire), the other for civil service and other government agencies (the CS questionnaire).*

---

* See Appendix A for a statement of methodology.

A combined total of 931 of these two questionnaires were sent to 524 different jurisdictions (49 state, 260 city, and 215 county). The return rates were 64% (337) for the CS questionnaire and 52% (210) for the PC questionnaire. Forty three states, 183 cities and 112 counties were represented.[1] Questionnaires were returned by 117 police agencies and 93 correctional agencies.

The Reported Practices

The potential gap between government responsibilities mandated by law and what they do in practice poses a constant threat to the successful execution of social policy. Improper execution of policy may stem from different factors: Deliberate nonenforcement; nonenforcement because of ignorance or inertia; lack of funds; organized opposition; inefficiency; misunderstanding; or over-enforcement. The possibilities for bureaucratic distortions are virtually unlimited. It is therefore imperative that both the practice and the theory be studied.

The critical employment practice of government which requires an applicant to divulge information about his past criminal record on the job application form has been discussed in Chapter 1, This chapter discusses practices as reported via questionnaire. Such self-reports may be distorted or information may be withheld. The results herein presented should be viewed with this awareness.

---

* Educational systems and government financed hospital systems were excluded from consideration.

Agencies which reported that they hire individuals with criminal records were asked what types of jobs these individuals held at the time of the survey. Eighty-seven cities, thrity-seven counties, eight states, thirty-three police agencies and forty-two correctional agencies responded. The types of job held by persons with criminal records are shown in Table 3.

Table 3

Types of Jobs Held By Persons with Criminal Records By Government Agency

TYPE AGENCY	TYPE JOB	NUMBER OF AGENCIES REPORTING EMPLOYMENT OF ONE OR MORE PERSONS WITH CRIMINAL RECORDS	PERCENT BY TYPE OF AGENCY
States, Cities, Counties, COMBINED			*
	Unskilled	119	90.1
	Skilled	82	62.1
	Clerical	68	51.5
	Professional	37	28.0
			**
Police	Unskilled	17	51.1
	Clerical	12	36.3
	Patrolman	21	63.6
	Social Worker	1	3.0
	Counselor's Aide	1	3.0
	Professional	4	12.1
			***
Correctional	Unskilled	17	40.4
	Clerical	15	35.7
	Custodial	2	4.7
	Social Worker	13	30.9
	Counselor's Aide	9	21.4
	Professional	15	35.7

---

* Percentages based on number of 132 responding, city, county and state government agencies

** Percentages based on number of 33 responding police agencies

*** Percentages based on number of 42 responding correctional agencies

Table reveals that governments generally employ persons with criminal records in unskilled positions. Yet over a quarter of the responding agencies said they employ persons with criminal records in professional positions.

Police and correctional agencies report employing fewer persons with criminal records. But as many are employed in professional and skilled as in unskilled positions. Almost two-thirds of the responding police agencies have some patrolmen with some kind of criminal record.

The fact that local and state governments most frequently employ persons with criminal records in unskilled positions can be interpreted in two ways. 1) It may be that there is a conscious policy of refusing better jobs to persons with criminal records; or 2) as the President's Crime Commission and other studies have documented it may be the fact that most persons with criminal records are ill-educated, from the lower socio-economic group, and have irregular and unrewarding job backgrounds. Under such circumstances many of these persons may not be qualified for skilled or professional employment. Whichever approach one takes merely points up the need for programs which train persons for meaningful jobs, and the necessity of mitigating the effect of a criminal record on a person's job possibilities.

Agencies which said they hire persons with criminal records were asked about measures, if any, to obtain information about applicants from law enforcement agencies. Agencies were asked to indicate the types of information they used in evaluating applicants. Table 4 lists the kinds of information and the number of agencies reporting that they request such data.

Table 4

TYPES OF INFORMATION REQUESTED BY GOVERNMENT EMPLOYERS FROM LAW ENFORCEMENT AGENCIES REGARDING JOB APPLICANTS

Type of Information	Type Agency	Used		Not Used	
		No.	%	No.	%
Photo of applicant requested and referred to local police	City	9	9.8	82	90.2
	County	3	7.1	39	92.9
	State	0	0	11	100
	Police	20	41.6	28	58.4
	Correctional	3	5.3	53	94.7
Photo of applicant requested and referred to FBI	City	5	5.6	85	94.4
	County	4	9.3	39	90.7
	State	0	0	11	100
	Police	11	22.9	37	77.1
	Correctional	4	6.2	52	93.8
Fingerprints taken and referred to local police	City	48	51.6	45	48.4
	County	13	30.2	30	69.8
	State	2	18.1	9	81.9
	Police	32	68.2	15	31.8
	Correctional	11	19.6	45	80.4
Fingerprints taken and referred to FBI	City	42	45.1	51	54.9
	County	21	48.8	22	51.2
	State	4	36.3	7	63.7
	Police	38	80.9	9	19.1
	Correctional	21	37.4	35	62.6

Table 4 (continued)

			Used		
All applicant's names automatically referred to local police or FBI	City	57	61.9	35	38.1
	County	23	53.5	20	46.5
	State	5	45.4	6	54.6
	Police	39	81.4	9	18.6
	Correctional	30	53.6	26	46.4
Contact with parole officer	City	19	23.1	63	76.9
	County	13	31.7	28	68.3
	State	5	41.7	7	58.3
	Police	5	10.9	41	89.1
	Correctional	10	18.2	45	81.8
Contact with probation officer	City	18	21.9	64	78.1
	County	14	35.0	26	65.0
	State	5	41.6	7	58.4
	Police	6	11.7	45	88.3
	Correctional	11	20.0	44	80.0

Table 4 reveals that the practice of asking for criminal record data about job applicants is widespread. The type of information most frequently requested is a name check with the local police or the Federal Bureau of Investigation. Second is fingerprints referred to local police or the FBI. This supports a common belief that the practice of police referrals is widespread, although it may be used less than is commonly believed.

Table 5 lists the number of types of information used by government. The mean number of types of information for all responding agencies was 2.4.

Table 5

Numbers of Information Types Used by Government Employers

	# of agencies making response	Percentage of Responding Agencies
No type requested	18	11%
One type used	53	31%
Two types used	32	18.7%
Three types used	31	18%
Four types used	12	7%
Five types used	12	7%
Six types used	3	2%
Seven types used	2	1%

The Reported Policies

All agencies were asked whether they have restrictions on hiring persons with criminal records. They were requested to classify their hiring policies as being one of three types: unrestricted, partially restricted or totally restricted (no hiring of persons with criminal records). Their responses are tabulated in Table 6.

Table 6

GOVERNMENT HIRING POLICIES REGARDING PERSONS WITH CRIMINAL RECORDS

Type Government Agency	Number of Agencies with Policy		
		Type Policy	
	Unrestricted	Partially Restricted	Totally Restricted
State	4 (31%)	8 (63%)	1 (6%)
County	8 (14%)	37 (69%)	9 (16%)
City	17 (15%)	84 (76%)	9 (9%)
Police	5 (5%)	30 (28%)	71 (67%)
Corrections	24 (28%)	38 (45%)	23 (27%)
Total	58 (15%)	197 (54%)	113 (31%) 2/

Table 6 indicates that most agencies follow a partially restricted approach, except for the police, who are almost totally restricted. The question relating to restrictions on hiring was followed by a detailed question listing the types of criminal records which could be grounds for not hiring, ranging from a juvenile record to conviction of a felony. If the agency or jurisdiction responding checked more than one type of record the least serious of the records checked was tallied. This procedure, it was felt, would show whether or not agencies rely upon records which reflect a conviction.

The respondents were instructed to check all records used by their agencies as grounds for not hiring. Thus the results of this inquiry as presented in Table 7 represents the most restrictive hiring policies of the agencies and jurisdictions. The rank order of seriousness used in coding the responses to this question was as follows: juvenile record (least serious); arrest for a misdemeanor; charged with a misdemeanor; convicted of a misdemeanor with sentence suspended; convicted of a misdemeanor with no suspension; arrest for a felony; charged with a felony; convicted of a felony with sentence suspended; convicted of a felony with no suspension (most serious type of record.)*

---

* It is arguable that a different rank order might have been used. For instance, conviction of a misdemeanor could have been regarded more seriously than arrest for a felony.

Table 7

Types of Criminal Records Used By Government Agencies as Grounds For Not Hiring Applicants

Type of Record 3/	Number of Agencies Using Record							
	Type of Agency							
	City		County		Police		Corrections**	
	No.	%	No.	%	No.	%	No.	%
Juvenile Record	4	3.3	2	3.6	31	27.9	3	4.1
Misdemeanor								
Arrested					11	10.0	1	1.4
Charged					2	1.5		
Convicted but sentence suspended	3	2.5						
Convicted & sentenced	12	9.9	3	5.5	25	22.6	5	6.9
Felony								
Arrested	7	5.8	2	3.6	7	6.3	1	1.4
Charged	1	0.9	1	1.8	1	0.8	3	4.2
Convicted but sentence suspended	6	4.9			10	11.0	2	2.8
Convicted & sentenced	17	14.1	4	7.3	8	7.1	4	5.6
Does Not Apply	2	1.8					2	2.8
Other	5	3.9	1	1.8	1	0.8	2	2.8

* State responses to this question were too sparse to present.

** Correctional respondents were all state agencies, primarily Departments of Corrections and Boards of Probation and Parole.

Table 7 (continued)

Types of Criminal Records Used by Government Agencies as Grounds For Not Hiring Applicants

Type of Record	Number of Agencies Using Record							
	Type of Agency							
	City		County		Police		Corrections	
	No.	%	No.	%	No.	%	No.	%
Dont' Know							2	2.8
Specific Grounds Undetermined *	61	50.4	32	58.	3	2.6	33	45.8
Criminal Record is an absolute bar to employment **	3	2.5	6	10.9	9	7.9	10	13.9
"Pattern" of criminalty			4	7.3	2	1.5	4	5.6
Total	121	100.0	55	100.0	110	100.0	72	100.0

* The answer made it obvious that a criminal record of some sort was grounds for not hiring but did not specify which grounds were relevant.

** This was the tally where the jurisdiction or agency indicated that the hiring policy was totally restricted and one of the following occurred: 1) no grounds were specified at all; or 2) comments were made which emphasized the fact that no one with any criminal records were hired.

The results in Table 7 provide interesting contrasts. For instance, the police have relatively rigid and more restrictive policies. Thirty-one (27.9%) of the police agencies responding indicated that a juvenile record would be a ground for not hiring. Cities, counties and correctional departments indicated that this would be an extremely low factor in grounds for not hiring, ranging from 3.3% to 4.1%.* Eleven (10%) of the police agencies responding use an arrest for a misdemeanor as a grounds for not hiring. In contrast, neither cities or counties use this as a ground for not hiring, and only one correctional department (1.4%) considers it.

Under these categories (juvenile record and charge or arrest for a misdemeanor) almost 40% of responding police agencies do not hire, as contrasted to corrections agencies, counties and cities, at 5.6% or under. When you add the category of a criminal record as an absolute bar to employment (nine (7.9% of the responding police agencies) almost half of all such police agencies use these minimal criminal records as a grounds for not hiring. This strict approach differs from correctional agencies ten (13.9%) stating that a criminal record is an absolute bar to employment). Thus 20% of all responding correctional agencies use these minimal criminal records as an absolute bar or grounds for not hiring.

---

* It should be noted that respondents from all jurisdictions and agencies reporting the use of juvenile records as grounds for not hiring stressed that the juvenile record would have to be for a serious offense (usually a felony if committed by an adult.)

Counties and cities have a more flexible policy, but 6 (10.9%) of the responding counties use a criminal record is an absolute bar to employment, substantially higher than the cities 3 (2.5%)*

It is perhaps understandable that the police are more sensitive than other governmental agencies in their attitudes towards the hiring of people who have any kind of criminal record. To a lesser degree this feeling may also be present in correctional departments, although recent trends in correctional treatment have caused correctional treatment have caused correctional administrators to become more amenable to the use of ex-offenders in treatment programs.[4]

Perhaps the most important finding is the high number of responses by cities, counties and correctional agencies indicating vagueness on the issue of hiring individuals with criminal records. This is reflected in the high number of responses in the category of "specific grounds undetermined"; cities, 61 (50.4%); counties 32 (58.2%) and correctional agencies 33 (45.8%). Police responses were so specific that only three (2.6%) of responding agencies could be categorized as being unable to give specific grounds for not hiring an applicant.

---

* See Table 6 on p. __, where 9 cities and 9 counties report using a criminal record as an absolute bar.

These responses could reflect basic police rigidity of the police. It could also reflect an image which each of these jurisdictions and agencies believes it should provide to interested viewers. In any event, there is virtually no way of evaluating such responses without an intensive look at the jurisdiction or agency. Some cities and counties responded that no persons with criminal records had been hired in their jurisdiction. Others went so far as to say no one with a criminal record had ever even applied for a job. What would happen if a qualified applicant with a record applied is problematical.*

If we total all the grounds for not hiring which stop short of an actual conviction we find that 12.5% of the cities, 20% of the counties, 25% of the correctional agencies, and 54.4% of the police departments use it as grounds for not hiring. Add on the high percentage for unspecified grounds in cities and counties and you arrive at a combined percentage for an absolute bar and a potential bar (62.9% for cities; 78.2% for counties). Another category, "pattern of criminality" should also be considered. No cities reported this to be a factor in their hiring processes; 4 counties (7.2%); 4 correctional agencies (5.6%) and 2 police departments (1.5%), indicated that it was a grounds for not hiring. Several respondents made it clear that patterns of arrest records would be considered under this category.

---

* On site experiences indicated that jurisdictions are unable to say how many individuals with records have been hired. From numerous interviews we conclude that they are few in number and largely restricted to unskilled jobs.

The Institute believes that these findings, combined with the findings of Chapter 1, Analysis of Job Application Forms, and Chapter 7 (site visits) document that records short of conviction raise significant obstacles to applicants for jobs. It points to the need for action by the Federal Government concerning the use of arrest records (Chapter 8).

The Impact of the Practices and Policies

The most valid and accurate measure of the practices and policies of government agencies regarding employment of persons with criminal records would have to be obtained through in-depth agency studies. In particular, it would be desireable to know the acceptance (or rejection) rates or the promotion (or demotion or "special handling") rates of various agencies for applicants with criminal records.5/ This was not possible in this project; even the few in-depth probes of specific jurisdictions were not meant to obtain such detailed information.

A significant finding was that most agencies do not have this statistical information available or that the information is available - but not usable or withheld. The most likely interpretation of the consistently low responses to questions which required such statistics is that the information is simply not compiled. This interpretation is supported by the site visit findings indicating minimal policy awareness and no uniform practices. Typically, personnel representatives handle each case on an ad hoc basis. This is an important finding because it reveals a lack of any rational basis for instituting, continuing or modifying administrative policies.

Table 8 suggests that few people with criminal records "apply" for jobs. It is possible that many more persons initiate applications for employment but do not complete them when they see questions about previous arrests or convictions. Interviews with parole and probation officers in one jurisdiction indicated this was not an uncommon occurrence. The chilling effect of such questions without any explanatory material could cause many potential applicants to quietly screen themselves out. Furthermore, the "reputation" an agency receives by asking such questions may be transmitted by word of mouth, thus other persons may not even bother to start the application process, knowing in advance what they will find. Interviews with several officials of a minority self-help program substantiated this problem, in part because they gave this advice themselves.

Table 8

Number of Job Applicants with Criminal Records* By Type of Government Agency for One Year Period

NUMBER OF APPLICANTS WITH CRIMINAL RECORDS	TYPE OF AGENCY	NUMBER OF AGENCIES REPORTING
5 or less	State	3
	County	18
	City	18
	Police	47
	Corrections	37
6 to 10	State	0
	County	3
	City	9
	Police	16
	Corrections	9
11 to 30	State	1
	County	7
	City	9
	Police	6
	Corrections	9
31 to 100	State	0
	County	3
	City	10
	Police	3
	Corrections	3
over 100	State	0
	County	0
	City	0
	Police	2
	Corrections	0

---

* The one year periods are not congruent. Agencies were allowed to use either the last fiscal or the last calendar year preceding the survey.

Assessment of Work Characteristics of Employees with Criminal Records

Statements by agencies comparing employees with criminal records to other employees must be regarded with caution. Such assessments may amount to little more than the opinion of a few people based on their contact with an unrepresentative sample of employees. An additional bias may be introduced in agencies which do not systematically keep abreast of criminal records of their employees. The criminal record of an employee may come to a supervisor's attention only under adverse or notorious conditions.

With these considerations in mind one might expect comparisons to be generally unfavorable for the employee with the criminal record. But the few responses -- 66 city, county, and state agencies, 20 police and 30 correctional agencies were not unfavorable to the employee with the criminal record.

The agencies were asked whether employees with criminal records were better than, the same as, or worse than other employees in each of eight categories: punctuality; attendance; honesty; judgment; initiative; co-operativeness; accuracy; and industriousness. The assessments of the agencies are presented in Table 9.

The table suggests that employees with criminal records are not different than other employees. For each of the eight work characteristics listed the vast majority of the responding agencies reported that employees with criminal records are the same as other employees. What little difference there is in the reports is slightly more favorable than unfavorable toward the employee with the criminal record.

Table 9

Comparison of Eight Work Characteristics Between Employees With and Employees Without Criminal Records

Type of Government Agency	Work Characteristic	How Employees with criminal records compare with other employees	Number of Agencies Reporting	Percent of Agencies by type of Agency*
City, County and State agencies combined	Punctuality	More favorably	2	3.2
		Same as others	58	92.0
		Less favorably	3	4.8
	Attendance	More favorably	5	7.9
		Same as others	54	85.7
		Less favorably	4	6.4
	Honesty	More favorably	0	0
		Same as others	57	98.2
		Less favorably	1	1.8
	Judgment	More favorably	3	4.8
		Same as others	54	88.7
		Less favorably	4	6.5
	Initiative	More favorably	8	13.3
		Same as others	50	83.3
		Less favorably	2	3.4

---

* While the N was not always constant, its range was no more than 58 to 63, with 3 categories at 50 and 3 more at 51 the fluctuation is not great.

Table 9 (continued)

Type of Government Agency	Work Characteristic	How Employees with criminal records compare with other employees	Number of Agencies Reporting	Percent of Agencies by type of Agency
City, County and State agencies combined	Co-operativeness	More favorably	7	11.7
		Same as others	53	88.3
		Less favorably	0	0
	Accuracy	More favorably	0	0
		Same as others	59	98.3
		Less favorably	1	1.7
	Industriousness	More favorably	4	6.5
		Same as others	56	91.9
		Less favorably	1	1.6
Police	Punctuality	More favorably	0	0
		Same as others	19	95
		Less favorably	1	5
	Attendance	More favorably	0	0
		Same as others	18	90
		Less favorably	2	10
	Honesty	More favorably	0	0
		Same as others	20	100
		Less favorably	0	0
	Judgment	More favorably	0	0
		Same as others	18	90
		Less favorably	2	10

Table 9 (continued)

Type of Government Agency	Work Characteristic	How employees with criminal records compare with other employees	Number of agencies reporting	Percent of agencies by type of agency
Police	**Initiative**	More favorably	1	5
		Same as others	18	90
		Less favorably	1	5
	Co-operativeness	More favorably	1	5
		Same as others	18	90
		Less favorably	1	5
	Accuracy	More favorably	0	0
		Same as others	20	100
		Less favorably	0	0
	Industriousness	More favorably	1	5
		Same as others	19	95
		Less favorably	0	0
Correctional	Punctuality	More favorably	4	13.3
		Same as others	23	76.7
		Less favorably	3	10.0
	Attendance	More favorably	2	6.7
		Same as others	24	80.0
		Less favorably	4	13.3
	Honesty	More favorably	1	3.6
		Same as others	26	92.8
		Less favorably	1	3.6
	Judgment	More favorably	1	1.8
		Same as others	27	96.4
		Less favorably	1	1.8

Table 9 (continued)

Table 9 (continued)

Type of Government Agency	Work Characteristic	How employees with criminal records compare with other employees	Number of agencies reporting	Percent of agencies by type of agency
Correctional	Initiative	More favorably	7	24.1
		Same as others	20	69.0
		Less favorably	2	6.9
	Co-operativeness	More favorably	6	20.7
		Same as others	23	79.3
		Less favorably	0	0
	Accuracy	More favorably	0	0
		Same as others	27	96.4
		Less favorably	1	3.6
	Industriousness	More favorably	5	17.2
		Same as others	22	75.8
		Less favorably	2	7.0

Findings and Recommendations

1. Finding -- Almost one fifth of the jurisdictions and agencies reported that an arrest record was an absolute bar to employment. Virtually all reported that they do consider some kind of criminal record as possible grounds for not hiring. Most agencies and jurisdictions (except the police) did not indicate the specific type of criminal record considered. But, it is a fair inference that they were not limiting themselves to records of convictions, especially when considered in light of on-site interviews and the finding that moot jurisdictions ask about arrest records. Most police agencies explicitly indicated that they do not limit themselves to conviction records. Half the responding police agencies consider records of legal involvement short of conviction.

Recommendation -- The above finding bolsters the need for the federal arrest statute recommended in Chapter 8 and the model annullment and sealing statute recommended in Chapter 5.

2. Finding -- Most responding cities, counties and correctional departments report that they do employ persons with criminal records (primarily in unskilled jobs). The numbers reported are small and a majority of cities and counties state that discretion is exercised in almost all cases. Most agencies could not supply statistical analysis of the impact of their employment policies regarding persons with criminal records. Actual policy, therefore, remains hidden. Almost all responding agencies reported that employees with criminal records are as punctual; honest; cooperative; accurate; industrious; attendant; and

sensible as other employees.

Recommendation -- Thus it is recommended that when special policies exist regarding applicants or employees with criminal records, they should periodically be reconsidered in the light of their impact. Government agencies should gather statistical information that will provide a rational ground for instituting, abandoning or modifying employment policies.

3. Finding -- Slightly over half of the agencies responding reported that they automatically refer all job applicants names to the FBI or the local police. Almost as many take fingerprints and have them checked by the FBI.

Recommendation -- These practices should be modified where necessary to comport with the Institute's recommendations given above. Where fingerprinting is an integral part of the employment process, all applicants should be advised that the existence of a criminal record will not serve to automatically disqualify that person from consideration.

4. Finding -- A significant finding involved the use of juvenile records by the police as a grounds for not hiring.

Recommendation -- It points up the need for the model use of the Model Use of Juvenile Records Act recommended in Chapter 2 which would prohibit the use of juvenile records by any government agency for purpose of job screening after the destruction of the record.

FOOTNOTES

1/ There was a slight discrepancy not amounting to more than 5 or 6 cases -- between the number of responses and the number of jurisdictions represented in the returns. This is a result of the fact that in a few cases two questionnaires were sent to the same jurisdiction and both were returned. The 182 and 112 figures quoted are numbers of responses. They overestimate by a matter of 2 or 3 cases each the actual number of jurisdictions. The figure for the states is exact.

2/ A recent survey by the National Civil Service League had similar findings. In response to the question whether they would hire people with police records 13% of the responding cities, 15% of the counties, and 7% of the states reported "No" or had no response. Good Government 20-21 (Spring 1971).

3/ Id. The following chart suggests that the various jurisdictions are less liberal in their hiring policy of persons with criminal records than chart 7 suggests. This survey, showing who they would hire, cannot be compared in detail with chart 7 because the high percentage not hired because of unspecified grounds.

	Misdemeanor		Felony	
Jurisdiction	arrest	conviction	arrest	conviction
States	87%	87%	80%	76%
Counties	74%	66%	49%	42%
Cities	75%	72%	49%	45%

4/ See Offenders As a Correctional Manpower Resource, Joint Commission on Correctional Manpower and Training (1968).

5/ A model field experiment of this sort was conducted by Richard Schwartz and Jerome Skolnick who studied the effects of criminal court records on the employment opportunities of unskilled workers. See "Two Studies of Legal Stigma", in The Other Side, Howard S. Becker, ed., pp. 103-177 (1964).

Chapter 7

Site Visits at Six Selected Jurisdictions

The Project Staff selected six jurisdictions for site visits to investigate public employment hiring procedures.* The six included three cities, one county, one metro area (formerly Nashville and Davidson County), and one state: Nashville-Davidson, Tennessee; Hennepin County (Minneapolis), Minnesota; The State of Michigan; Newark, New Jersey; Phoenix, Arizona; and San Francisco, California.

Comparison of the Six Site Visit Jurisdictions--Demographic Characteristics**

The six jurisdictions chosen for site visits were picked purposefully but they are not intended to be a representative sample of all governmental jurisdictions. Geographically, the study sites represent all areas of the United States except the Northwest.

Population

Three of the governmental units studied service approximately the same size populations. Nashville-Davidson Metropolitan area, the City of Phoenix and the City of Newark each had roughly 400,000 people.1/

---

* See Appendix A Methodology, for the rationale of the site visits and a description of how these sites were chosen.

** See Appendix H for the demographic characteristics.

The City of San Francisco* and Hennepin County also serviced approximately the same size population, 800,000. The State of Michigan had a population of approximately 8 million. In the decade from 1950 to 1960 Phoenix experienced an incredible 311% population increase while the populations of Newark and San Francisco decreased by 8% and 4% respectively. The rate of change in the size of the populations for the State of Michigan, Hennepin County, and Nashville-Davidson Metropolitan area for the period were virtually identical. Each experienced approximately a 24% increase.

Racial Composition

The sites differed widely on the proportion of non-whites in their populations with a high of 34.4% in Newark to a low of 1.4% in Hennepin County. Nashville-Davidson and San Francisco had roughly the same proportion of non-whites, 19%. Phoenix had 6% while Michigan had 9%.

Crime Rates

San Francisco stood alone with the highest rate of 4666.3 per 100,000 population. Hennepin County had the lowest rate (3137.7) for a quasi-comparable governmental unit--that is, excluding the state of

---

* San Francisco is legally both a city and a county (see further discussion below). But, for our purposes, it will be regarded as a city.

Michigan with its comparatively low rate of 2697.8. Nashville-Davidson, Phoenix and Newark had roughly similar rates at 3324.7; 3471.6 and 3520.0 respectively.[2]

Education and Income Levels

Hennepin County had the highest median number of school years attained (12.2) and the highest median income ($6954). San Francisco had the second highest median school years (12.0) and median income ($6717). Newark and Nashville-Davidson were lowest of the six along both dimensions. Newark had 9.[illegible] median school years and a median income of $5454. Nashville-Davidson had 10.3 median school years but a median income of only $4332. Michigan had a higher median income ($6256) than Phoenix ($6117) but a lower median number of school years (10.8 as compared to 11.8 for Phoenix).

Unemployment

Hennepin County was again among the most "advantaged" of the jurisdictions with its rate of only 3.6%.

However, the other leading jurisdiction was Nashville-Davidson with an unemployment rate of only 3.5%. Newark maintained its position as last of the six with its high rate of 8.2.%. Michigan, San Francisco and Phoenix exchanged places in the rankings with the respective rates of 6.9%, 6.1%, and 4.5%.

Summary

Hennepin County represents the low-minority, prosperous, successful, economically secure, relatively crime-free community. At the other end of the continuum is the City of Newark which is suffering from all the evils of a decaying city--high crime rate, high unemployment, and a flight of the white, educated, higher-income citizens to the suburbs. The other jurisdictions fall somewhere between these two extremes but represent unique combinations of various features. For instance Nashville-Davidson County has a high concentration of non-white and a comparatively low level of educational and financial attainment; yet, it also has comparatively low rates of crime and unemployment. On the other hand, while San Francisco has high levels of financial and educational attainment, it also has a high crime rate and a high unemployment rate. Phoenix might be thought of as representing a kind of mid-point along all of these dimensions.

With all the problems of that city, Newark has the largest government employees-to-citizen ratio of all six jurisdictions with a rate of 34.5 government employees to 1,000 population. The smallest government-citizen ratio is in Phoenix, with the very low rate of 9.4. The other four jurisdictions have roughly the same rates, approximately 24.0 per 1,000 population.

Growth in Number of Employees 3/

After a decline during WWII state and local governments have each year, without exception, added to their payrolls. From employee levels of 973,000 (state) and 2,643,000 (local) in 1951, these governments have increased their payrolls to 2,614,000 (state) and 7,102,000 (local) in 1969, and are expected to reach 3,205,000 (state) and 8,195,000 (local) in 1975.

The rate of growth peaked in the mid-sixties. At the highest point, 1968, the increase was [illegible] in all functions state and local, specifically 13.4% for education employment and 12.1% for other functions. From 1955-66 the largest increase in government was at the state level which grew 8[illegible]. Local government was larger in 1966 by 75%.

Educational needs have stimulated much of the growth, but other employment functions have been mushrooming during 1966-75. The growth rates of local government during 1960-66 were 29.7%; the predicted 1966-75 rate is 48.6%. State government grew 26.8% during 1960-66; the predicted rate during 1966-75 is 41.4%.

State governments are expected to increase employee numbers more than local governments. Early evidence of such a trend was the surpassing in 1967 by state employment of municipal employment. The states became the third largest government employer, after the federal government and school districts.

Functions

The functions which have tended to increase their proportion of governments' manpower needs have been: On the state level--education, police protection, corrections and public welfare; on the city level--education, general control, housing, services, public welfare, libraries, parks and air transportation.

Functions which have been accounting for a lessening share of government employees include on the three levels--highways, health and hospitals, natural resources and water transportation.

Police Protection

Employment for police protection increased in 1957-67 on state and county levels, accounting for 2.2% of the state's workers in 1957 to 4.2% in 1967, and 5.7% of the counties' workers in 1957 to 6.4% in 1967. The percentage of municipal employees employed for police protection declined over the ten-year period from 15.3% to 14.6% of the total. In 1968 and 1969, the situation has been reversed. All levels of government reported rises in 1969 and the signs are that the increases will continue into the near future.

Services--Fire, Sanitation, Sewage, Utilities

Services have grown from comprising 18.2% of city employees in 1968. The county's service functions have grown from 1.4% of county employees in 1957 to 1.8% in 1969.

Public Welfare

Public Welfare has accounted for an increasing percentage of state, city and county employment throughout the 1957-69 period. The public welfare function has increased its percentage of state employment from 3.5% in 1957 4.0 in 1969. In the cities the proportion has increased from 1.4% in 1957 to 1.9 in 1969, and in the counties from 7.3 in 1957 to 9.1% in 1969.

Summary

Public Welfare, services and education appear to be the greatest expanding employer functions of state, city and county governments. In 1969 the largest percentages of government employees were found in: state--education 34.2%, health and hospitals 21.5%, and roads 13.4%, cities--services 26.1%, education 19.3%, police protection 15.1%, health and hospitals 7.2% and general control 6.2%; counties--education 22.4%, health and hospitals 20.3%, highways 11%, general control 10.3% public welfare 9.1% and police protection 6.7%.

Specific Jurisdictions

Michigan increased its employment from 52,805 in 1957 to 80,218 in 1967.

San Francisco swelled from 14,782 (1957) city employees to 19,962 in 1969.

Phoenix grew from 1,947 city employees in 1957 to 5,479 in 1969.

Newark's city employment grew from 10,535 in 1957 to 14,913 in 1969.

Nashville-Davidson is more difficult to compare because of its change to a metro city government between 1962-67 and the change in census classification from a county to a municipality. Davidson grew in its total employee number from 2,748 in 1957 to 13,952 in 1967.

Hennepin grew in total county employment from 1,711 to 3,677 during 1957-67.

Civil Service Systems

Commissions

While the civil service was designed to eliminate the use of public employment as a source of patronage, the commissions in the six jurisdictions are generally appointed by the chief executive of the jurisdiction for a certain term. The mayor of San Fransico names three part-time unpaid commissioners for four years and they may be renamed. The mayor of Nashville-Davidson appoints a five-man commission subject to the metro council's confirmation. The commission must include a lawyer, representatives of business and labor, and none may be public officials or hold political party positions.

The Michigan Constitution seeks to limit the governor's discretion in his appointments by providing that the commission of four members shall not have more than two from the same political party. These four men are appointed for eight years and are unsalaried.

New Jersey's five-man part-time paid commission is also appointed by the governor with the advise and consent of the state senate. The governor also chooses the president of the commission who appoints the chief executive officer of the commission.

The duties of the commissions are fairly uniform. Generally their responsibilities include defining the policy of the service and its implementation through job specifications, tests, rules and regulations of the service, establishment of salaries, classifying and reclassifying jobs, and instituting legal proceedings for violations of civil service provisions. The commissions generally have the responsibility to review actions of their staff and department heads on appeals from rejections, dismissal and suspension from employment.

The powers granted the commissions are generally broad. The day-to-day operation is in the hands of the civil service staff. Where commissioners are part-time officials the real policy making may be in the hands of the civil service administrator and his staff (who do the actual examing and hiring).

The locus of authority is thus in the chief administrator--in San Francisco the general manager; in New Jersey the chief examiner and secretary.

The Hiring Process

Apart from the policy of the civil service concerning persons with records the ex-offender or person with an arrest record may be deterred, discouraged and discriminated against by the actual civil service process itself. The time involved in applying for a job, the physical set-up of the procedure, the entry level job requirements, job requirements, job announcements, and the exams, all serve to cause self-screening by the applicant with a record.

Where an applicant is just out of prison, the need for a job may be immediate. The civil service process, if at all characterizable, generally is slow. Application periods of several months are not uncommon. In San Francisco the applicant is told that his test grading period may be more than four weeks. This written exam is only one step of the whole application process.

Newark's police department check of all applicants for unskilled positions in itself takes two to three weeks. The decision process may take only a few days or a few weeks depending on the need for employees; however, there are occasionally delays in decisions of several months.

Hennepin's selection process may involve some delays for the average applicant; in the case of an applicant with a record the delay is certain. For instance, an applicant for a position with the city hospital is substantially delayed where the candidate has a record which necessitates a check with correction and police officials.

A parole officer in Lansing, Michigan pinpointed the delay between announcement of the exam and appointment as the primary problem for the applicant with a record. He attributed the delay to special investigations of the individuals with criminal records which extend an already lengthy application period.

Job Announcements

The ex-offender may not even know of the civil service job openings and opportunities, or may be deterred from applying if he did. The most immediate, and most easily corrected, problem is that of the terminology utilized on announcements. It is not uncommon for them to be written at a level of verbal complexity higher than the job demands.[4/] For example, one jurisdiction's announcement for Neighborhood Aide, a position similar to being a mother's helper, used the word "siblings" in its description of duties as well as phraseology which might be beyond the level of potential applicants. All jurisdictions were guilty of this at times. Other problems arose in connection with the manner in which announcements were brought to the public's attention, and the jurisdictions varied in the scope of their dissemination.

A formal procedure is followed in Hennepin. When a vacancy occurs the department notifies the civil service which in turn disseminates job announcements to various department bulletin boards and to pilot city centers, as well as to certain agencies and publications. Announcements are not, however, sent to all social agencies. The decision is based on considerations of the theoretical overlaps with the pilot centers. But neither an organized group of ex-offenders or an Indian organization ever received such announcements.

Announcements are posted in a number of places in Michigan's civil service, all inadvertently designed to avoid reaching individuals with a record. Announcements are posted in state police units, Michigan's security employee commission, libraries, placement and guidance counselors, special agencies and political committees. Only occasionally, when there is a special need, does the civil service publish in the newspapers or on TV or radio.

San Francisco publishes its job announcements in places similar to Michigan's and additionally publishes announcements in the newspaper. Michigan and San Francisco share also in a division of opinion as to the desirability of publicity concerning the hiring of ex-offenders and the policy about hiring ex-offenders. The issue was defined in San Francisco as whether the publicity to educate the public and primarily to acquaint persons with records with the civil service's liberal policy would be outweighed by the strong public backlash.

One state director of personnel felt that the wisest policy is to avoid all publicity, both good and bad. Conversely, another personnel director for a department of social services suggested that success stories would help solve the problems of hiring persons with records and would serve to educate employers and the public. Neither appeared to consider the primary problem of notice of opportunity to those with records who generally believe they have no chance to obtain public employment.

One result is a general unawareness of liberal civil service hiring policies on the part of certain agencies which advise persons about employment. The director of Goodwill Industries did not send people to the civil service in San Francisco to seek employment because the "people weren't bondable." This statement would have been correct 10 years ago but today the state has a blanket bond which covers any employee.

Nashville-Davidson restricts its recruitment efforts to colleges and universities and vocational high schools. Notices of jobs are also sent to the local employment security office. Job announcements may carry subtle discouragements. Under the heading of Notes on the San Francisco job announcements, the prospective applicant is warned that a history of employment with frequent and unexplained changes of employers may be the basis of rejection of the application.

A number of announcements specify that certain licenses including a drivers license must be had or at least must be obtainable. Under California law a person who has committed any act involving dishonesty, fraud or deceit, or who has been found guilty of or convicted of a felony or crime involving moral turpitude may be denied a license. The license requirement is not limited to driving occupations. It is required, for example, of public health nurses, policemen, steam fitters, and supervisory probation officers.

A number of announcements specify that one of the examinations a candidate must pass is an appraisal of a person's personal history and personal traits. An applicant with a record may tend to shy away from this kind of personal probing.

Job Qualifications

Even when the person with a record does see a job announcement, which usually includes a summary of its duties and the educational and experience requirements, he may still be deterred from applying. The required educational and experience requirements are too high for most ex-offenders to meet. It has been found to be the case that too many local and state governments are setting requirements levels far higher than is necessary for the job.[5] While some screening procedure may be necessary, if only to process numerous applicants responding to a single vacancy, an arbitrary educational requirement is not necessarily related to potential "job success." Testing experts recommend that flexible passing points need be established, or that an applicant's score need be interpreted in relation to the applicant and also the job position as opposed to establishing a fixed "passing" point.[6] It has been pointed out that reliance by screening agencies solely upon the application will often work to the disservice of the applicant who may be unskilled in seeking employment,[7] thus it has been recommended that civil service interviews should be required whereby the interviewer would go over the application form with each applicant in order to help develop a full picture of the applicant's potential.[8]

In Hennepin County, for example, the minimal educational requirement for most jobs is a high school diploma. A highway maintenance man, whose duties basically involve manual labor such as spreading asphalt, digging trenches, and laying pipe, must have the equivalent of a high school degree plus six months' experience. This requirement, which appears unduly high, would work to the detriment of most ex-offenders in Minnesota. The median grade level of the states adults admitted to parole during fiscal year 1968-69 was 9.9. Nearly 60% of the state's paroled youths and 70% of the state's paroled adults would have been unable to meet the county's basic educational requirement for highway maintenance. While comparative data was unobtainable from the other on-site jurisdictions, practices there are not likely to be significantly different.[9/]

Experience requirements present special obstacles to an ex-offender when the time element of the experience is important. A number of San Francisco's civil service jobs require a period of apprenticeship or journeyman years that might in and of themselves eliminate a number of offenders. For example, in the electrician trade all classes require completion of a recognized apprenticeship in an applicable field plus, for an electrician, three years of first class paid experience in the building trades industry, two years of which must have been in electrical construction experience in the building trades industry. This time requirement alone might eliminate the average young offender who has served a sentence. But the precise training requirement may mitigate against certain socio-economic groups from which the average offender comes.

Special Problems of Prisoners

Once the application is made other problems arise for the individual with a record. In Nashville-Davidson, an applicant is frequently sent to the police department for fingerprinting. Few ex-offenders, when made aware of this probing into their background, will persist in the long drawn-out application process.

Hennepin County receives one to two applications a month from incarcerated individuals. While their applications are accepted, the convicts generally are not able to finish the application process. They are not released for an interview or for testing.

The director of San Francisco's county work-release programs pointed to the same problem for the imprisoned applicant, suggesting that the need for special court orders to obtain release of the convict was too cumbersome to be practical.

Attempts to Ease Rigid Requirements

Some jurisdictions make efforts to alleviate biases built into written examinations. San Francisco's charter specifically provides that examinations given laborers shall relate only to physical qualifications and experience. Further, the commission may in its discretion rate the applicant for positions for mechanical trade and occupations totally on experience and physical qualifications.

In Hennepin those not required to take exams were those applying for highly technical and professional positions. Nashville-Davidson conducts only an oral examination of applicants for jobs not requiring high school education. Michigan, like the other jurisdictions, may give a written, oral, educational and experience and/or a performance exam. The state does, however, use reduced passing points in some of its examinations as an attempt to provide a sufficient number of screened applicants for state job vacancies.

Oral exams and examination of an applicant's personal history and traits are tests most open to criticism. Agencies trying to place individuals with records in the civil service in San Francisco suggested that these result in subjective evaluations and are the primary tools to weed out people with records.

Hennepin County objectified its oral interview process somewhat by providing for tape recordings of the session to be kept on file which may be used for appeals. The interviewers use an oral appraisal rating form which provides a score of from 6 to 10 (in increasing value) for each of the following traits: personal characteristics; judgment; training; training experience; presentation of ideas; attitudes toward position. There is also a final rating for overall evaluation. The process, however, primarily relies on a subjective evaluation.

A rejected applicant may have recourse. In San Francisco the candidate is notified of his right of appeal to the civil service commission in his letter of rejection. A less formal procedure is followed in Newark. An applicant who challenges a decision will be seen by the assistant personnel director.

If a person with a record does apply and is rejected there is very little chance that he will appeal. The rejection confirms what he previously suspected, that the system is just stacked against him. Moreover, the time and trauma involved may dissuade him. There are in fact few appeals.

In Michigan the system of provisional appointment completely bypasses the civil service mechanics of announcement, examination, screening and registering. The individual hiring authority may employ the individual it wants so long as the person is capable of qualifying under civil service examination procedures one year later.

A limited tenure system in San Francisco, while still a part of the centralized civil service structure, is less stringent in its requirements for appointment. Employees under the system are normally given temporary appointment and have no civil service status; therefore the job theoretically lasts only so long as no civil service employee is available. This system accrues to the advantage of minority groups, including those with a record, and (1) the appointments are not made on a competitive basis and (2) the applicant generally is not fingerprinted. Moreover the limited tenure means quicker processing.

Newark's regular public hiring is characterized in part, in the lesser skilled positions, by the informality of these alternative systems. For example, recruiting by the Housing Authority of unskilled labor is done by word of mouth or through local 305 of the building services employees union. The officers of the local union " . . . check their members who remember people who need jobs and who look reliable." Screening is informal and until the new employee reaches a semi-skilled level he does not have to pass a civil service examination. Given the Newark Housing Authority's promotion policy from unskilled to semiskilled, combined with its informal on-the-job training, many reach this level.

The informal nature of these systems cuts both ways. Without standards the system maybe more vulnerable to nepotism, favoritism and politics. Furthermore, although the limited tenure system allows people with records to get into government employment, the insecurity, generally low level, and restricted potential of these positions is generally not a good long-range solution for these employees.

The Six Jurisdictions

The six jurisdictions selected for site visits varied in demographic characteristics, number of employees and civil service structure as discussed supra. The remainder of this chapter summarizes the variances among the six in statutes and ordinances relevant to public employment of persons with criminal records and in the extent of disclosure of an applicant's record required by the jurisdiction's application for public employment.

It further summarizes the actual public employment practices of each jurisdiction as they relate to individuals with records. Based on study team observation, it demonstrates that inter-jurisdictional variances in such practices are as great as those relating to demography, civil service structure, states and ordinances, and application forms.

1. Nashville-Davidson, Tennessee

A. Relevant statues and ordinances

Although there does not appear to be a state statute regulating disclosure of adult criminal records, a metropolitan ordinance provides the police department with authority to release such data to employers.[10/] In addition, a local ordinance requires certain ex-offenders to register with the Chief of Police within 48 hours after arrival in the jurisdiction, at which time the individual may be photographed and fingerprinted.[11/]

A state statute does limit the disclosure of records of juvenile proceedings:

> Inspection of records limited. -- The records and information obtained in all cases of children shall not be available to public inspection. All legal records and documents such as petitions, complaints, summons, subpoenas, motions, pleadings, transcript of testimony, orders and decrees of the court and other legal papers in any case shall be open to inspection by the parents, guardian, parties having a legitimate interest in the case, or their attorneys or by any institution or agency to which the child may have been committed under this chapter. All information of a social nature such as reports to aid the court in making the disposition of the child may be made available, in the discretion of the court, for examination by any person, agency or institution. Such person, agency or institution may make or receive copies of such information, but it shall be unlawful for such person, agency or institution to use such information for any purpose other than that for which the court permitted it to be copied and released.[12/]

The state's version of the typical statutory differentiation between (adult) criminal and juvenile proceedings reads as follows:

> Exemption from laws applicable to infamous crimes. --Children found to be delinquent shall be exempt from the operation of laws applicable to infamous crimes, and such children shall not be rendered infamous by the judgment of the court in which they are tried.[13]

B. Extent of disclosure of record required by application form

Every applicant for public employment in Davidson County must complete a Metropolitan Civil Service Commission application form. The form requires disclosure of and full explanation for all arrests, including those related to "traffic and any minor offenses." No distinction is made between adult and juvenile incidents.

C. Actual procedures in the jurisdiction

Upon completing the Civil Service Commission application, the job-seeker is given a fingerprint card which he must present to the police department. The police may at this point conduct a community background investigation of the applicant. The card is later returned to the Civil Service Commission with the applicant's arrest record and the result of any background investigation.

Applicants who do not admit a criminal record, but are found to have one, are automatically dropped from consideration. Individuals with records are not hired for positions which require bonding.

All arrest and conviction data are placed in the applicant's personnel file, to which all department heads have access. If the applicant has an arrest record, the prospective hiring agency sends his photo to the police and the F.B.I. (in the latter case, accompanied by a fingerprint card). Where applicable, the applicant's probation or parole officer is likewise contacted.

Both juvenile and criminal records appear to circulate freely. A member of the survey team obtained the records of two ex-offenders from the Police Records Division without presenting any identification.[14] Juvenile records are routinely released to the military, government employers, and the police. Private employers may easily obtain the equivalent of a "rap sheet" listing an applicant's juvenile offenses.[15] Additionally, adjudicated juveniles are advised upon release to disclose their juvenile involvements in completing job applications. In light of the ostensibly tight restrictions on disclosure of juvenile records by state statute (cited _supra_), these practices are rather surprising.

2. Hennepin County (Minneapolis), Minnesota

A. Relevant Statutes and Ordinances

A Minnesota statute requires that all officers and agencies of the state and its political subdivisions keep all records necessary for full knowledge of their official activities.[16] It further directs every custodian of such records to make them easily accessible for convenient use and, except as otherwise expressly provided by law, to "permit all public records in his custody to be inspected . . . at reasonable times and under his supervision . . . ."[17]

There is a further statutory provision which provides that". . . none of the records of the juvenile court, including legal records, shall be open to public inspection or their contents disclosed except by order of the court.[18/] Police are likewise required to maintain separate records of arrest for persons under 18, which records are not open to public inspection in the absence of court order.[19/]

An adult first offender in Minnesota may petition the Board of Pardon for a "pardon extraordinary," which, if granted, will operate to restore his civil rights and nullify his conviction.[20/] Such petitions are infrequent and are generally granted only in cases involving long periods of subsequent lawful conduct.[21/]

If a minor is committed to the care of the Youth Conservation Commission and is discharged before the expiration of his maximum term or is placed on probation, he may seek a court order nullifying his adjudication.[22/]

State statutes further provide that juvenile proceedings are not criminal in nature and do not result in criminal conviction.[23/]

B. Extent of disclosure of record required by application form

The application for county employment requires disclosure of "full particulars" of all arrests for other than minor traffic violations. Thus no distinction is made between arrest and conviction or between adult criminal and juvenile incidents.

C. Actual procedures in the jurisdiction

If a job applicant discloses that he has been arrested, the County Personnel Department requests a copy of the individual's record from the 'ocal police. A record check with local authorities is routinely made of all applicants for law enforcement, hospital attendant, and government vehicle driver positions. In addition, all law enforcement applicants are subjected to an FBI check. A check is sometimes made if there is a reason to believe that an individual has made a deliberate misstatement in his application.

Individuals who are determined to have made such misstatements are generally rejected as bad risks. Individuals with arrest records are automatically barred from police positions.

In all other situations, however, the weight assigned an applicant's record is within the discretion of the individual personnel representative processing the application. Statements indicated that a record would not be of great significance unless it disclosed a series of incidents suggesting a pattern of unacceptable behavior; that factors other than the record itself -- evidence of rehabilitation, passage of time since the applicant's last involvement, and the applicant's attitude were also considered.[24/]

Few applicants with criminal records actually applied for employment with the county. Interviews with ex-offenders and individuals helping them form a self-help group revealed that the county was not thought of as a potential employer.

An interview with the Juvenile Probation officers disclosed strict adherence to the state statute prohibiting disclosure of juvenile court records in the absence of court order.[25/]

3. The State of Michigan

A. Relevant statutes

Michigan statutory law provides that juvenile court records may not be disclosed in the absence of court order.[26]

If an individual commits an offense prior to reaching 21 and does not commit any further offenses, he may, after five years, petition the court to set aside his adjudication or conviction. If the court determines that his "circumstances and behavior" have been exemplary, it may grant such an order, after which "the applicant, for purposes of the law, shall be deemed not to have been previously convicted."[27]

Like most states, Michigan's code provides that a juvenile court proceeding and adjudication are not criminal in nature.[28]

B. Extent of disclosure of record required by application form

The criminal record inquiry in Michigan's employment application reads as follows:

> ARREST AND CONVICTION RECORD. If you were ever fined, or jailed, or placed on probation, or received a suspended sentence, or paid court costs, or forfeited bond or collateral for violation of any law, give the full facts of the trouble. You may omit only minor traffic violations. Other minor violations must be listed. Drunk driving, reckless driving, hit and run driving, and revocation of drivers license are not minor traffic violations and must be included. If you are in doubt as to whether a traffic violation not mentioned above is a major violation, list it on the application. You will be fingerprinted and investigated before being hired.
>
> In evaluating arrest records we consider the kind of offense, the number and recency of offenses, the penalty imposed, your age at the time, and your prior and subse-

> quent conduct and work record. If you have been in trouble, be sure you have given us a full explanation.
>
> The fact that you admit an arrest record does not necessarily mean that your examination will be rejected nor that you will be rejected nor that you will be barred from state employment.
>
> Be sure to tell us the full truth about yourself and your background. . . . If a materially false answer is found after you are on the job, you will be dismissed.

A close technical reading of the first sentence of the inquiry might yield instances in which an applicant might be justified in omitting an incident which resulted in arrest but not conviction. But the very heading of the inquiry and the two additional references to "arrest" records suggest that the typical applicant would feel required to disclose arrests as well as convictions.

The form does exclude minor traffic offenses, but includes juvenile incidents by rather definite implication.

C. Actual procedures in the jurisdiction

After the individual completes the application, his fingerprints are forwarded to the FBI and the State Police for a record check. Certain types of convictions serve to bar individuals from certain positions. Former embezzlers are not hired for positions involving control of funds. Individuals convicted of sex offenses are not permitted to work with persons who are physically handicapped, mentally retarded, or confined. And the Department of Natural Resources will not hire persons convicted of conservation crimes. Finally, certain conviction records disqualify applicants for law enforcement and related positions.*

Employment prospects for ex-offenders vary considerably among departments. The Department of Social Services, for example is administered among Michigan's 85 counties. The State Director of Personnel reported that applicants with arrest records were not identified; but one Supervisor reported that such applicants were identified by asterisks next to their names. Many large agencies are decentralized and hiring is done largely by supervisors who have no written guidelines for considering applicants with criminal records.

4. Newark, New Jersey

A. Relevant Statutes

A New Jersey statute provides that juvenile court adjudications are not convictions, that an adjudicated juvenile is not considered a criminal, and that a juvenile's adjudication may not be used against him "in any future civil service examination, appointment or application."[29/]

In 1967 a juvenile expungement statute was added the juvenile may petition for relief five years after the adjudication if he has no subsequent adjudications. Expungement is not available if the offense involved was treason, anarchy, any capital crime, kidnapping, perjury, carrying concealed or deadly weapons, rape, seduction, arson, burglary, or robbery. If successful, the applicant is granted an order directing the clerk of the court to "expunge from the records all evidence of said adjudication". The precise effect of such an order is not clear.[30]

---

* For example, applicants for prison guard are disqualified if they have been sentenced to confinement in jail or prison, convicted of a felony, or convicted of two misdemeanors or juvenile offenses.

Expungement is also available to a limited class of adult ex-offenders in New Jersey, those with no subsequent convictions ten years after the conviction in question. As in the juvenile statute, this relief is expressly withheld from those involved in certain enumerated offenses and expungement is available only when the sentence was suspended or involved a fine of $1000 or less. The statute apparently contemplates the full restoration of all civil rights in the limited number of cases in which it is applicable.[31]

State law, controls Newark's hiring practices. An applicant may be rejected if he "has been guilty of a crime or of infamous or notoriously disgraceful conduct."[32] However, an ex-offender may be hired if he "has achieved a degree of rehabilitation that indicates that his or her employment would not be incompatible with the welfare of society and the aims and objectives to be accomplished by the agency.[33] This provision was amended in 1970 to provide that in addition to the Chief Examiner and Secretary of the Civil Service Commission, the appointing agency must approve an applicant as qualified for hiring under this provision. And whereas, the provision had been inapplicable to those convicted of a high misdemeanor, the exception was removed by the 1970 amendment.[34]

Separate statutes govern county and city police and fire department officials. Such positions are not open to anyone "convicted of any indictable offense or who has been convicted of any crime or offense involving moral turpitude.[35/] In addition, any employee convicted of a crime involving moral turpitude shall "forfeit his office."[36/]

B. Extent of disclosure of record required by application form

Hiring in Newark is governed by state regulations and agencies. Thus the application for the New Jersey Civil Service is used. It asks the individual if he has ever been arrested and for full details and disposition of any such instances.*

C. Actual procedures in the jurisdiction

Hiring procedures in the Newark Housing Authority were selected as an example. An examination of its practices disclosed a lack of uniformity in procedures.**

---

* The accompanying instructions state that a record does not preclude an applicant from being hired and that "[e]ach case is considered on its individual merits."

** The Authority receives its funds primarily from the federal government with possible supplements from the state. The City of Newark aids the Authority through services (i.e., paper, supplies, etc.). As a result, while the Authority would appear to be an autonomous unit, it is governed under the same set of Civil Service statutes as the rest of the city government. In addition, the Governor of New Jersey appoints one commissioner and the Mayor of Newark appoints four commissioners, giving both the state and the city some control over the Authority, with the city having a major voice. The Authority employs 1,307 persons, and with the exception of the Police Department, is the largest single agency in Newark.

Of the Authority's 1300 employees, more than half are unskilled laborers. It is estimated that a majority of the unskilled labor force have a criminal record of some type. Most of these records are minor but some include felonies.

Recruiting for the Authority is done informally through union officials. Screening is also informal, particularly with regard to the weight to be assigned to a criminal record. Union personnel have been informed by the Authority that it will not accept an applicant with a record of selling narcotics, the Authority wants to avoid bringing persons with such records in proximity to tenants. The Authority will, however, hire persons convicted of narcotics use. An effort is made to distinguish between marijuana and heroin, but police records are occasionally vague, referring only to "narcotics."

There is a tendency not to hire applicants with records disclosing patterns such as breaking and entering, or assaults with deadly weapons. Such tendencies are not inflexible if an individual can demonstrate his rehabilitation. The Authority is frank to admit that they have no formal guidelines to evaluate an applicant's alleged rehabilitation. In some instances, a clean record of a few months is enough; in others, a few years may be required. In two recent cases, men with high misdemeanor records were accepted by the Authority but rejected by the State Civil Service Commission. The Authority had concluded that the men had been rehabilitated, and the Commission eventually acquiesced.

Unskilled labor applications are not automatically routed to the Police Department for a record check, but the Authority's Personnel Department usually asks for a police check of applicants for higher level jobs.

5. Phoenix, Arizona

A. Relevant statutes and ordinances

Although state statutory law is silent on the issue of disclosure of criminal records, a Phoenix ordinance permits release of arrest records.

Arizona has no statute relating to expungement of criminal records and has repealed a statute providing for expungement of juvenile violations.[37]

The City of Phoenix operates under public employment personnel rules which were adopted pursuant to public referendum. These rules require the filing of a job application which discloses the applicant's arrest record.[38] The City Civil Service Board is required to reject any applicant who is "addicted to the use of drugs or intoxicants"[39] or who "has been guilty of a felony or a crime involving moral turpitude, or infamous or disgraceful conduct.[40]

B. Extent of disclosure of record required by application form

The City Personnel Department's application asks for a full explanation of all arrests, specifically including juvenile incidents and specifically excluding minor traffic offenses. Item 14 asks "have you either as a juvenile or adult ever been arrested or detained by any police or military authority?". It allows the applicant to omit minor traffic violations but instructs, "In case of doubt answer yes. Explain fully the circumstances of ALL arrests and detentions in the space provided . . . " There is no indication that an arrest is not a bar to city employment and no apparent concern for the confidentiality of juvenile records. In fact, by asking about arrests but not convictions, there is a blurring of the distinction between them. (The application form for Maricopa County employment, it should be added, is in this respect virtually the same, but the application for state employment closely follows State Personnel Commission rules in asking only about convictions for anything other than minor traffic violations).

C. Actual procedures in the jurisdiction

All applicants "are processed through the Phoenix Police Identification Bureau and arrest information is released to the City Personnel Department."[41/]

The Phoenix Personnel Department reported that the city will employ applicants with criminal records with consideration given to (1) the nature of the criminal acts, (2) the frequency of these acts and (3) last conviction and its nature. The city claims flexibility in considering all applicants except those accused of a felony or convicted of one, and reported ex-offenders in virtually all kinds of positions, including professional, administrative, and managerial slots.

At the same time, referral was made to the mandatory disqualifications in the city's personnel rules cited supra. Presumably, th

Department will not hire any convicted felons in view of the clear prohibition of city ordinance. It would also appear that the rules would disqualify misdemeanants "guilty . . . of a crime involving moral turpitude, or infamous or disgraceful conduct." What is left to be flexible about is apparently those convicted of minor misdemeanors and those with arrest records who fill out an application form despite these questions asked on the job application form.

6. San Francisco, California

A. Relevant statutes

California statute authorizes the release of adult criminal records only to law enforcement agencies and certain prescribed officials.[42] Documents relating to juvenile court proceedings may not be disclosed to outside individuals in the absence of court order.[43]

The state code contains several provisions relating to expungement of adult records under certain conditions. A convicted misdemeanant may apply for expungement and removal of all disabilities under certain circumstances. A similar provision exists for an individual who has fulfilled the conditions of his probation or has been discharged from probation.[44]

A youth who is honorably discharged by the state's youth authority may petition for removal of any disabilities previously incurred providing he has not been committed to an adult detention facility.[45] An automatic expungement applies to juveniles who are honorably dismissed from a school institution on retained in such a school for the entire period of commitment.[46]

A juvenile court adjudication is expressly declared noncriminal. Convicted felons are barred from police positions by statute.[47]

B. Extent of disclosure of record required by application form

The San Francisco application form asks for all convictions within the past two years. Traffic violations under thirty dollars are specifically excluded, while courts martial are specifically included. An applicant conceivably could refuse to disclose juvenile adjudications on the basis that they are distinguished from criminal convictions by statute, although many applicants would not be knowledgeable to make this distinction.

Applicants for police, fire, probation, and court jobs are asked to disclose their entire records.

C. Actual procedures in the jurisdiction

The City is prohibited from hiring convicted felons as peace officers by state statute. In other instances, however, persons with criminal records are considered on an individual basis. Attention is given to the nature of the job in question, the seriousness and nature of the applicant's criminal record, and the applicant's work record. If an applicant is on probation or parole, his application is considered by the Civil Service Commission itself, rather than by the staff.

A printed policy statement, adopted due in great measure to efforts of the local Human Rights Commission, unequivocally states that any applicant with a record will be considered on an individual basis and not barred automatically from public employment. The statement further advises that he need not disclose any record items which may have been sealed by court order and that he may appeal to the Commission if rejected. This statement was not being provided to job seekers prior to their completing the application form.

Despite the statutory proscription of disclosure of juvenile records without court order, it appears that the juvenile court clerk's office and probation officers in fact exercise discretion in releasing such records to prospective employers without court order. A similar situation appears to exist with respect to adult criminal records.[48/]

It was also reported that the general public's lack of awareness of the statutory differentiation between juvenile adjudication and criminal conviction, compounded by inadequate notice of the availability of procedures for securing sealing, tended to make the state's rather elaborate sealing statutes a virtual dead letter.[49/]

Findings and Recommendations

1. Finding -- All reports and projects indicate continued growth in the number of employees in state and local government.

Recommendation -- As a growing job market state and local governments must show that they are at least as willing as private industry to employ persons with criminal records. Government can no longer exhort private employers to hire offenders without setting a proper example. Furthermore, government is charged with the responsibility of protecting the public from criminals and also responsible for rehabilitating criminals. Unless it takes positive action in training and employing ex-offenders, it abnegates its responsibilities to the public.

2. Finding -- The time involved in applying for a job, the physical set-up of the procedure, the entry level job requirements, and the examinations, all serve to screen out applicants with a record, sometimes by a process of self-screening on the part of the applicant himself.

Recommendations -- a. Several jurisdictions reported inordinate delays between submission of an application and a decision about the job. Most individuals released from prison need a job right away. Every effort should be made to shorten that time, particularly for offenders.

b. In some jurisdictions the inmate of an institution could not be temporarily released to take civil service examinations, nor would civil service personnel administer the examination at the institution. Jurisdictions should find a way to bring together civil service examinations and inmates about to be released. This would alleviate the delay previously mentioned.

c. In some jurisdictions civil service requirements for the most menial jobs call for a high school diploma or its equivalent. Statistics indicate that many offenders do not have this level of education. This built-in requirement discriminates automatically against a large number of offenders. Civil Service agencies should re-examine requirements for all jobs to determine if the educational requirement is realistic and downgrade the requirements where feasible. Where otherwise qualified offenders are applying for a job some flexibility should be built into the system.

d. In some jurisdictions examinations and the way they are administered acted to screen out some offenders. Every effort should be made to make certain that the fact of a criminal record is not reflected in the way examinations are given and administered.

3. Finding -- Announcements of examinations are frequently not made available to inmates of penal systems.

Recommendation -- An effort must be made to provide for the distribution of job announcements within the penal system of the jurisdiction involved. This could include announcements in the media, posting of the announcement on bulletin boards and inclusion of the announcements in prison publications.

4. Finding -- Some jobs require a substantial period of apprenticeship, thus creating a bar for many offenders in their efforts to obtaining such jobs.

Recommendation -- Prison programs should emphasize practices which meet union standards for apprenticeship, and unions should agree to accept qualified prison programs as meeting their apprenticeship requirements.

5. Finding -- Access to juvenile records in some jurisdictions was permissible in instances apparently prohibited by state statute.

Recommendation -- See model use of juvenile record statute in Chapter 2.

6. Finding -- In some juvenile probation departments no effort was made to inform juveniles of their rights to have the records sealed and expunged.

Recommendation -- It should be standard policy in all juvenile probation departments for the court or a juvenile probation officer to make certain that juveniles are fully informed of these rights.

7. Finding -- In a number of jurisdictions rules and regulations concerning the processing of job applicants with criminal records were not promulgated; in others they were prepared but not made available to the applicants prior to their filling out the job application.

Recommendation -- Rules and regulations clearly delineating the status of individuals with criminal records and what they may expect by way of treatment should be prepared, publicized, and discussed so that personnel representatives and job applicants are fully aware of policies and procedures.

FOOTNOTES

1/ U.S. Bureau of the Census, County and City Data Book, 1967. Much of the statistical data on the following pages was extracted from this publication.

2/ Uniform Crime Reports, 1968.

3/ Data in this section was obtained from the following U.S. Bureau of the Census publications and Tomorrow's Manpower Needs, U.S. Department of Labor Statistics, Bulletin 1606, Vols II, IV, 1969.

U.S. Bureau of the Census, Public Employment in 1969, Government Printing Office, Washington, D.C. 1970.

U.S. Bureau of the Census, Census of Governments 1962, Vol III, Compendium of Public Employment, U.S. Government Printing Office, Washington, D.C., 1963.

U.S. Bureau of the Census, Census of Governments 1967, Vol III, No. 2, Compendium of Public Employment, U.S. Government Printing Office, Washington, D.C., 1967.

U.S. Bureau of the Census, Census of Governments 1968, Public Employment in 1968, U.S. Government Printing Office, Washington, D.C.

U.S. Bureau of the Census, Census of Governments 1967, Vol II, No. 2, Summary of Public Employment, U.S. Government Printing Office, Washington, D.C., 1968.

4/ "Guidelines on Recruitment and Selection Methods for Support Classes in Human Services," Dept. of H.E.W., Office of State Merit Systems, Aug. 1968.

5/ Interviews with Dr. Kenneth Millard, Chief, Division of Examinations and Research, and Albert Aronson, Director, Office of State Merit Systems, Department of Health, Education, and Welfare, July/August, 1970.

6/ Telephone discussion with Dr. Muriel Abbott, Director of the Testing Department for Harcourt, Brace & World, Inc., August 26, 1970; see also "Recommended Practice in Setting Passing Scores on PPA Tests," bulletin enclosure (undated) in letter from Public Personnel Association of Chicago, August 24, 1970.

FOOTNOTES (cont'd)

7/ A Minneapolis, Minnesota, project involving parolees found that they are too often a product of extremely disadvantaged conditions who is often unable to discern his own employment capabilities and training. The Rehabilitation of Parolees, Minneapolis Rehabilitation Center (1968).

8/ Interview with Dr. Kenneth Millard, Chief, Division of Examinations and Research, Office of State Merit Systems, U.S. Department of H.E.W., July/August, 1970.

9/ See Case Studies in Public Jobs for the Disadvantaged, Reference File No. 9, National Civil Service League, p. 19 (July 1970).

Aside from the discriminatory nature of many selection procedures, certain examination processes for entry-level and low-level positions in civil service are clearly over-rigorous for the actual job to be performed and often do not test the applicant for the specific skills needed for the job. The examinations "screen out" those suited to the position, and "screen in" those over-qualified--the latter tending to ineffectiveness on the job.

See also Public Employment and the Disadvantaged, Reference File No. 10, National Civil Service League, p.2 (Sept. 1970)

> A switch in emphasis from educational inputs to outputs--what one can do on the job--is needed. Performance and potential should be the guide. This outlook would change the emphasis on credentials which bars people from jobs today. People would be hired on the basis of what they can do rather than on what kinds of education they have or have not had.

Other studies have made findings that the offender group is frequently low in educational attainment. The President's Commission on Crime in the District of Columbia found that only 14% of the adult offenders had completed high school. Report of Presidents Commission 127 (1966). The Presidents Commission on Law Enforcement and Administration of Justice found offenders to be disadvantages in many ways-- "likely to be a member of the lowest social and economic groups in the country, poorly educated and perhaps unemployed, unmarried, reared in a broken home, and to have a prior criminal record." The Challenge of Crime in a Free Society 44 (1967).

FOOTNOTES (cont'd)

10/ Nashville Code §2-1-63 authorizes persons "of any office or department of . . . the Metro government" to make records available to the public. The police department regularly disseminates arrest records. Interview with police official.

11/ Nashville Code §24-2-6.

12/ Tenn. Code §37-245.

13/ Tenn. Code §37-267.

14/ Interviews with police officials indicated that records checks for employers may also include a record inquiry to the F.B.I., a practice the F.B.I. has reported as being expressly unauthorized under their instructions that F.B.I. information is to be used for official purposes only.

15/ Interview with Probation Officers.

16/ Minn. Stat. Ann. §15.17.

17/ Id. Opinions of the state Attorney General have declared that registers of persons in a jail are not public records and that criminal records over which the state Criminal Identification Division of the Bureau of Criminal Apprehension has jurisdiction are generally not to be made available to persons other than law enforcement officials.

18/ Minn. Stat. Ann. §260.161.

19/ Id. A recent opinion of the state Attorney General explicitly includes the military and similar governmental agencies within the statutory prohibition.

20/ Minn. Stat. Ann. §638.02(2) (Supp. 1965). The Statute specifically provides that the recipient of a pardon extraordinary need never disclose the conviction again except in subsequent judicial proceedings. But cf. Minn. Stat. Ann. §609.165 (individuals automatically restored to all civil rights on discharge from prison except under certain very limited circumstances).

21/ In 1968, e.g., 18 of 29 such petitions were granted, while, in 1969, 12 of 18 were granted. Full "pardons" are even more

FOOTNOTES (cont'd)

uncommon, being reserved for cases in which it is determined that innocent persons have been convicted.

22/ Minn. Stat. Ann. §242.31 (Supp. 1965). Such an order sets aside the adjudication and prevents it from being used in subsequent proceedings against the offender unless "otherwise admissible."

23/ Minn. Stat. Ann. §§242.12, 260.11 (Supp. 1965).

24/ Interviews with Department of Personnel representatives. There were no written policy directives to the individual personnel representatives concerning applicants with criminal records. Such representatives could thus screen out applicants solely on the basis of their prior criminal records. Interviews indicated that this was sometimes done, and that such screening out was done on an individual basis.

25/ Interview Hennepin County Juvenile Probation officials who stated that more could be done to inform juveniles of the statutory right to seek nullification of adjudication under certain circumstances.

26/ Mich. Stat. Ann. §27.3178 (598.28) (1962).

27/ Mich. Stat. Ann. §28.1274 (101) - (102) (1969 Supp.).

28/ Mich. Stat. Ann. §27.3178 (598.1) (1962).

29/ N.J.S.A. §2A:4-39 (1952).

30/ N.J.S.A. §2A:4-39.1 (1968 Supp.).

31/ N.J.S.A. §2A:164-28 (1952).

32/ N.J.S.A. §11:23-2 (1952).

33/ N.J.S.A. §11:23-2 (1952).

34/ Laws of N.J. Assly. Nos. 816-17, chs. 81-82, June 3, 1970. Before this amendment was passed, no state or local agency within the civil service laws could employ anyone convicted of a high misdemeanor. A civil service circular distributed to local personnel officials on September 23, 1966, reminded them that "by law, there can be no consideration given to appointment of persons who have been convicted of an offense

FOOTNOTES (cont'd)

which is a high misdemeanor." Civil Service Cir. No. 90, Sept. 23, 1966. See subtit. 10, Tit. 2A, N.J.S.A. for a listing of those offenses deemed high misdemeanors.

35/ N.J.S.A. §40:47-3 (1952).

36/ N.J.S.A. §40:69-166 (1952).

37/ 8 Ariz. Rev. Stats. §238 (1956).

38/ Rule 6 (d).

39/ Rule 6 (e).

40/ Rule 6 (e) (4).

41/ Letter from Lawrence M. Wetzel, Phoenix Chief of Police. State and County personnel officers may obtain arrest information from the Phoenix police through their respective law enforcement agencies Id.

42/ Ann. Pen. Code §11105.

43/ Ann. Welf. & Inst. Code §827.

44/ Ann. Pen. Code §1203.4.

45/ Ann. Welf. & Inst. Code §1779.

46/ Ann. Welf. & Inst. Code §1129

47/ Ann. Welf. & Inst. Code §503

48/ Letter from Mr. James Craig, Neighborhood Legal Assistance Foundation, Aug. 3, 1970.

49/ Interview with Vocational Rehabilitation Counselors, July 9, 1970.

Chapter 8

Arrest Records

The Use of Arrest Records

Information developed and data collected in Chapters 1, 6 and 7 of this study document beyond doubt the fact that arrest records are considered important by employers, and that such records constitute an obstacle to employment, even where there has been no conviction. More than three quarters of the cities and more than half of the counties and states from whom job application forms were obtained do ask for arrest records (Chapter 1).

Counties, cities, and correctional and police departments rely on criminal records short of a conviction as grounds for not hiring job applicants. Almost half of all police departments use such grounds. For counties, cities and correctional departments the percentages cannot be accurately determined because half or more indicated only that some form of record was a ground for not hiring, without specifying what specific record was involved. Many responses did indicate that records without convictions would be considered in a large number of cases (Chapter 6).

Finally, the site visits (Chapter 7) revealed that juvenile and arrest records are frequently made available to individuals, private employers, and government agencies, despite in some cases, the existence of state statutes which clearly prohibit such use.

Other studies and reports amply document the shocking collection and use of arrest records at the local, state and national levels. Available statistics indicate that approximately 25% of the national population may have records of non-traffic arrests with between 7 and 8 million persons being arrested in 1969 alone.[1/] The pattern of large numbers of arrests, many not followed by a conviction, will undoubtedly continue. The probability of being arrested, according to the President's Crime Commission is approximately 60% for white urban males and 80-90% for black urban males.[2/]

There is clear evidence that persistent efforts by employers, public and private, to obtain information about criminal records, including arrest records not followed by conviction, are successful; that despite the existence of some laws and a few cases restricting the use of such records, employers, particularly public employers, will continue to have access to these records.[3/] More than half of the states have proclaimed a public right of inspection of public documents without proof of special interest or purpose.[4/] While this is one of the few means by which the public may properly supervise governmental activities, at least in the area of arrest record the gravity of the harm done far outweighs the benefits derived in supervising, for example, police arrests. Probably of most importance is the fact that records of the Federal Bureau of Investigation could, until recently, be obtained by any government jurisdiction or agency.[5/]

Effect of Arrest Records

There can be no doubt that the existence of arrest records and their use is all-pervasive in our society and that millions of individuals may be hampered in their efforts at finding jobs and pursuing careers because of such records. What is really striking about how arrest records are obtained is that the single action of a police officer, who is after all a government employee, can result in such a record being recorded locally and ultimately appearing in a national repository of arrest records, the Federal Bureau of Investigation.

What is disturbing about the keeping of this record is that it may be the result of a police officer acting under substantial duress in an uncertain situation; he may be exercising discretion in determining whether or not to place a person under arrest; he may not fully understand the requirement that before an arrest can be made under most circumstances the police officer must have probable cause to believe that a crime has been committed; and finally, the arrest could be the result of arbitrary and capricious action by the police officer. Because of these and a wide variety of differing circumstances in times of great tension the action of this police officer can thereafter profoundly affect the arrested person's life. Should millions of Americans with arrest records not followed by conviction be held accountable because of this action by a police officer?[6]

Of particular importance in this respect is the evidence that for many years blacks in the United States were (and continue to be) subject to a disproportionate number of arrests.[7] For many years urban blacks were subject to "investigative arrests" which had little to do with any individual being specifically suspected of a crime. These arrests were solely to assist the police in their investigation and most blacks so arrested were subsequently released. Nevertheless, the arrest record is there on the books, permanent, immutable, and influential in hindering their full job potential. The implication of these statistics will be discussed when recommendations for a federal arrest record statute are made.

Arrest Records as Evidencing Criminality

What does an employer, or a person screening job applications, see when a criminal sheet (commonly called a "rap" sheet) is examined for evidence of prior criminality? He may see a long list of arrests for diverse violations with few indications of how the matter was terminated (dismissal, finding of guilty or not guilty, conviction, sentence, etc.). There is evidence to verify this assertion.

The fact is that many criminal records do not reveal dispositions.[8] In addition there is little uniformity among the states as to record-keeping practices, degree of processing various offenses, or terminology utilized to identify a given offense.[9] Nevertheless arrest records are exchanged throughout the nation through the vehicle of the FBI.

On top of this, it is unlikely that an average employer will adequately understand the legal meaning of charges and disposition, much less the practices of his local police or prosecutors. Few, if any, police departments attempt to inform record recipients as to the proper interpretation of records. Even for properly trained individuals, the record is apt to be misleading, a fact recognized by many authorities. Equally onerous is the form the record might take because on arrest for an alleged continuing criminal activity, such as mail fraud, may result in multiple charges which would take up many pages of an arrest record.[10]

Can these records be cleaned up so that they become an accurate representation of the true factual situation? As already indicated the FBI is in possession of almost 58 million fingerprints of individuals who have been arrested. If it takes 1,000 FBI clerks to merely process the daily input of records it staggers the imagination to conceive of the job of checking every record.[11] It might require a separate inquiry for each arrest back to the local police department and in many cases to the court which may have heard the case. Utter chaos would be the result.

The Need for Federal Action

Several approaches suggest solutions to the problem. One is to propose a model arrest record statute for adoption in the 50 states. For a variety of reasons this is not feasible. First, the effort to get 50 states to adopt essentially the same statute would require an enormous investment in time and resources which would take many years and would probably not result in all the states adopting the statute. Even if a majority of the states adopted such a statute the differences might be substantial enough to render the statute relatively meaningless. But most of all, the fact that these records are regularly supplied to the Federal Bureau of Investigation would render state statutes ineffective. Local police departments, upon request of government agencies and other employers, could simply obtain records from the FBI.

Recourse to the courts is the next obvious solution. However, this is a long and tedious process with no guarantee that the court will present solutions applicable to all persons with arrest records at a national level. Already there is evidence that courts disagree as to the significance of arrest records and what should be done about them.

> "Most of the case law on the subject of arrest records reflects efforts by individuals to secure the return of their records and related items such as fingerprints and photographs. With a few notable exceptions, such attempts have been unsuccessful.
>
> The courts have not been completely insensitive to the pleas of litigants, but they have reasoned that although a person may suffer some humiliation or embarrassment the harm to the individual is outweighed by the needs of effective law enforcement. Alternatively, some courts have assumed that little harm can result from arrest records since their use is restricted and confidential." 12/

More recent cases have started to pay more attention to the problem of arrest records and some have required the expungment or return of these records on the grounds that Negroes had been arrested and prosecuted for purposes of harrassment and interference with their right to vote, U.S. v. McLeod, 385 F.2d 734 (Cir. 5 1967); and that police harrassed and made mass arrests of "hippies", Hughes v. Rizzo, 282 F. Supp. 881 (ED. Pa. 1968).

The increased use of computerization in the area of law enforcement, plus the current development of such facilities by the Federal Bureau of Investigation led one court to enjoin the dissemination of one defendant's arrest record to other than enforcement agencies for law enforcement purposes and to federal agencies. The court stated,

> "Systematic recordation and dissemination of information about individual citizens is a form of surveillance and control which may easily inhibit freedom to speak, to work, and to move about in this land. If information available to Government is misused to publicize past incidents in the lives ofits citizens the pressures for conformity will be irresistible. Initiative and individuality can be suffocated and a resulting dullness of mind and conduct will become the norm." Menard v. Mitchell __ F Supp. __ (Civil Action No. 39-68 at 13, June 15 , 1971).

But basically resolution of the problem via court suit remains unsatisfactory to most individuals because of the propensity of courts to narrow the effect of their rulings to the particular matter brought before them and to the uncertainties attendant upon such court rulings. In addition, suits to expunge, destroy or obtain such records assume individuals with the capabilities for instituting such suits, hiring an attorney, and spending the long time which may be involved before a suit is resolved and final appeals are heard.

Perhaps the futility of court suits as the major approach to remedying the abusive use of criminal records is illustrated by Spock v. District of Columbia, 283 A. 2d 14 (1971). In this case 75 persons were arrested on minor charges of disorderly conduct. Six defendants were tried and acquitted. Charges as to the remaining defendants were nolle prossed (dropped). On a motion for expungement of the record the D.C. Court of Appeals held that the records must be preserved for a variety of reasons. The only relief judicially available for "appellants who desire to pursue their cases further" would be to make

> "such explanatory showing of nonculpability, by affidavit or otherwise, as in their view the facts warrant. . . . Of course, should there be a dispute of fact, a hearing will be required for resolution thereof . . . . (p. 20)

The court stated that should the arrested person affirmatively demonstrate nonculpability, the police and court records should reflect that fact.

In the Spock case all charges were dropped in May 1970. The Court of Appeals opinion was rendered September 1971, sixteen months later. The procedures for obtaining a "nonculpability" stamp on the record would be lengthy if the government did not agree with affidavits submitted by the persons arrested. There are simply not enough lawyers to handle all the potential cases, even for a fee. And many persons with arrest records could not afford the extensive litigation which is almost mandatory under the Spock ruling.

In the view of the Institute the problem has national implications requiring a uniform nationwide policy established after thorough consideration of all the issues. The Institute also feels that a problem of this dimension, affecting so many Americans throughout the country, requires the kind of comprehensive approach which only a legislative body can take. Only one legislative body can provide a comprehensive, uniform, national policy, the Congress of the United States, which the Institute believes must act in this area to prevent the continued use of arrest records from hindering the development of so many citizens.

This viewpoint has recently been substantiated by the case of Menard v. Mitchell, ___ F.Supp.__ (Civil Action No. 39-68 at 13-14, June 15, 1971), where the court stated,

> "Where the Government engages in conduct, such as the wide dissemination of arrest records, that clearly invades individual privacy by revealing episodes in a person's life of doubtful and certainly not determined import, its action cannot be permitted unless a compelling public necessity has been clearly shown. Neither the courts nor the Executive, absent very special considerations, should determine the question of public necessity ab initio. The matter is for the Congress to resolve in the first instance and only congressional action taken on the basis of explicit legislative findings demonstrating public necessity will suffice."

Traditionally the setting of policy and its implementation in the area of criminal justice has been largely a state function under our federal system. As a matter of fact, frequently much policy in the administration of criminal justice is really established at the local level by local prosecutors, police, and the courts. We are suggesting a re-examination of this traditional approach and a substantial departure in one area, the use of arrest records where jobs, licenses, bonding, and civil rights are involved. There has already been a substantial entry of federal influence through the establishment of the Law Enforcement Assistance Administration and the passage of laws broadening federal jurisdiction.

How can federal jurisdiction in this area be justified? There are a number of decisions which suggest the feasibility of federal jurisdiction in this area. The Institute is not now providing an exhaustive legal analysis for such jurisdiction which should take place before Congress acts. However, we will outline those areas which we think should be considered. Under the auspices of the Institute the Georgetown Law Journal is now preparing a comprehensive analysis of the arrest problem and legal theories involved therein. It is hoped this will provide a fuller exploration of the legal basis for federal jurisdiction. It is expected that this note will be published in the spring of 1972.

Perhaps the most significant area under which to base federal jurisdiction lies in the enactment of the Civil Rights Act of 1964. Of importance in this respect is Title VII of this act which makes it unlawful for an employer

> "to fail or refuse to hire or to discharge any individual . . . because of such individual's race . . . ."

In a recent west coast case, Gregory v. Litton Systems, Inc., 316 F. Supp. 401 (C.D. Cal. 1970), suit was brought under this Title by a black applicant for a job with Litton Industries. The court held that:

> "If Litton is permitted to continue obtaining information concerning the prior arrests of applicants for employment which did not result in convictions, the possible use of such information as an illegally discriminatory basis for rejection is so great and so likely, that, in order to effectuate the policies of the Civil Rights Act, Litton should be restrained from obtaining such information. . . . An intent to discriminate is not required to be shown so long as the discrimination shown is not accidental or inadvertent."

The court based its opinion on statistics showing substantially larger numbers of blacks being arrested than whites. There are profound implications in this opinion which is now on appeal to the Ninth Federal Circuit Court of Appeals. If Litton Industries cannot ask this question at all (which is what the court held) because it would in effect discriminate against blacks under Title VII, then no employer can ask such a question under any circumstances at any time or in any place. Certainly an employer cannot have separate job application forms for blacks and whites. Therefore the only way to avoid the discriminatory affect of asking about arrest records is to eliminate the question across the board.

The basic holding in Litton was bolstered in a subsequent case involving a company policy of requiring a high school education for initial assignment to a job and for transfer within the company. Griggs v. Duke Power Co., 401 U.S. 424 (1971). This case involved an interpretation of language found in Title VII of the Civil Rights Act of 1964. A unanimous court stated the following:

> "The objective of Congress in the enactment of Title VII . . . was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees. Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices . . . . What is required by Congress is the removal of artifical, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification . . . . The act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation. The touchstone is business necessity. If an employment practice which operates to exclude Negroes cannot be shown to be related to job performance, the practice is prohibited . . . . Congress has placed on the employer the burden of showing that any given requirement must have a manifest relationship to the employment in question . . . . Far from disparaging job

> qualifications as such, Congress has made such qualifications the controlling factor, so that race, religion, nationality, and sex become irrelevant. What Congress has commanded is that any tests used must measure the person for the job and not the person in the abstract."

This powerful language, plus the findings and holdings of this study and the Litton opinion, establish a firm basis for the exercise of Federal power in the field of arrest records. The Institute believes such power extends to all employers, public and private, and federal, state and local. The exercise of this power, namely the prohibiting of any employer from asking about arrest records not followed by conviction, could occur in two ways. Under these decisions the Equal Employment Opportunity Commission (EEOC) could promulgate a rule in the Guidelines on Employee Selection Procedures contained in 35 Fed. Reg. 12333 (August 1, 1970). Should EEOC fail to implement these court opinions Congress could enter the field with legislation prohibiting the arrest record question from being asked at any level.[13]

There are other theories under which Congress could claim jurisdiction in this area. In a recent New York Family Court case, In re Smith, 310 N.Y.S. 2d 617 (1970), the court said that as to juveniles, no query could be made concerning the arrest record.

> "In Sum, the Court and police records in their present form pose threats of injury to the respondents without justification in the public interest in law enforcement -- and indeed contrary to the public interest in helping deprived youths climb out of the poverty ghetto. Accordingly, a second and significant basis for relief for respondents is that the State's maintenance of the records constitutes an infringement of the Constitutional guarantee of due process and equal protection of the law."

Here again elements of the discriminatory effect of using arrest records is present, but the court also points to the constitutional guarantee of due process under the law as being violated by the retention and use of such records.

It should be noted that the presumption of innocence is described as "one of the rightful boasts of western civilization. [illegible]ch v. United States, 367 U.S. 456-471 (1961). Earlier the court stated that: "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." Coffin v. United States, 156 U.S. 432, 453 (1895). This presumption becomes a hollow right for despite its existence an arrest without a conviction can act as an obstacle to a person obtaining a job.

An additional factor to consider in drafting such legislation is the question of the right of privacy, particularly when all indications are that criminal justice data banks may ultimately contain all information about an individual's contact with the criminal justice system. A recent case held that the maintenance of arrest records by the police is an infringement of this fundamental right. Said the court:

> "The preservation of these records constitutes an unwarranted attack upon his character and reputation and violates his right to privacy." United States v. Kalish, 217 F. Supp. 968 (D.P.R. 1967).

The well established doctrine of the right/privilege concerning government employment is now under attack where governmental action relating to employees or applicants appears to be arbitrary or discriminatory. In McConnell v. Anderson, 316 F. Supp. 809 (D. Minn. 1970) the court refused to permit the rejection of an applicant for employment with the state. The applicant had been assured of employment subject to a formal confirmation, but upon his announced plans to "marry" a homosexual he was notified of his rejection. The court noted the absence of any connection between the applicant's private life and his efficiency or performance on the job (as a librarian). The court held that in the absence of showing a connection between his unusual sex attitudes or practices and his duties as an employee, there would not be sufficient grounds for rejection.[14] In view of the similar absence of any connection with an arrest record and potential criminality this case has an important bearing.[15]

Greene v. McElroy, 360 U.S. 474 (1959) involved governmental interference with private employment. In this case a governmental security board revoked the clearance of an aeronautical engineer. The action was based upon information obtained from confidential sources and there was no opportunity to confront and cross-examine the accusers. The court found that the manner in which the clearance had been revoked was a substantial restraint on employment opportunity which was in conflict with the notions of fair procedure.[16]

The significance of Greene stems from the fact that the Fifth Amendment will attach to any governmental action which will determine the fate of an individual's livlihood or reputation. Individuals with arrest records not leading to conviction are shackled with an interpretation by possible employers that they are potential criminals, thus significantly inhibiting job opportunities.

The analogy of the security clearance situation to a law enforcement agency supplying an employer with arrest records is [illegible]. The result of this cooperation by government with private interests is both arbitrary and unreasonable. To contribute significantly to the denial of an opportunity to work for an individual with an arrest record, who is otherwise qualified, is an arbitrary practice once the inherent fallacies and distortions of arrest records are established. And if an arrest record is grounds for the rejection, the applicant may never know it. A court suit could not be successful unless the existence of an arrest record is isolated as the reason for rejection. This would be very difficult when the full range of possibilities is considered.

Findings and Recommendations

Finding -- Enormous number of Americans have arrest records, many of which have not resulted in conviction of a crime. There is evidence that blacks have a much higher proportion of arrest records than whites. Arrest records are a key ground for not hiring job applicants at the state and local governmental level. Criminal record sheets which contain these records are notoriously inaccurate in that they do not show final disposition. Cleaning up the almost 60 million records at the Federal Bureau of Investigation would be almost impossible. Neither state legislation or court action promises to rectify the situation.

Recommendation -- There is need for federal action which would prohibit any employer from asking about arrest records on job application forms. This would take the form of an order from the Equal Employment Opportunity Commission (as it relates to private employers) or Federal legislation prohibiting any employer, public or private, from making an inquiry about arrest records not followed by conviction. Federal legislation would be more inclusive and have greater impact. There is additional need to prohibit law enforcement agencies from divulging arrest records which are not followed by conviction where a request for such a record concerns an application for employment, license, bonding, or any civil right or privilege.

The recommendation to prohibit the asking for arrest records is fundamental. Some jurisdictions prohibit the divulgence of records where no conviction or forfeiture of collateral following the arrest. However, if employers ask for arrest records the applicant, if he knows of the prohibition, must still answer the question. Should an employer discover him in a lie his chances for continued employment would be minimal. The only way to solve the problem of arrest records is to prohibit any questions relating thereto except for courts in presentence reports, law enforcement agencies investigating crimes or applicants for a job within their agency, or positions involving the national security.

[1] See Nussbaum, First Offenders: A Second Chance 8 11 (1956); Uniform Crime Reports 108 Table 23, 1969, reporting nearly 6 million arrests for 1969 in jurisdictions accounting for 71% of the population. See also FBI Annual Report 31 (1969), where the FBI reports holding fingerprints for 57,974,691 "criminals and suspects". Of the nearly 6 million arrested in 1969 82% of the persons charged with major felonies were prosecuted; 73% of those prosecuted were convicted of the charge. Thus approximately 60% of the persons arrested for such felonies were convicted, and some 40% were either acquitted or discharged in some other manner. See UCR 1969, 34,108. See note Discrimination on the Basis of Arrest Records, 56 Cornel L. Rev. 470 (1971), for a summary of the many adverse effects flowing from arrest records and the problems in attempting to resolve these effects by state legislation or judicial review.

[2] President's Commission on Law Enforcement and Administration of Justice, Task Force Report Science and Technology, Appendix J Projected Percentage of U.S. Population with Criminal Arrest and Conviction Records 216, 224 (1967).

[3] See In re Smith, 63 Misc. 2d 198, 310 NYS 2d 617 (Family Ct. 1970), wherein the court cited the availability of arrest records despite a city ordinance prohibiting their use. See also the findings of the Committee to Investigate the Affect of Police and Arrest Records on Employment Opportunities in the District of Columbia 1967 (cited as the Duncan Report) where the Committee

> "contacted the police departments of seven cities and two neighboring counties with respect to their practices concerning release of arrest records for employment purposes. Although it was stated to be the local policy or legal requirement in New York City, Los Angeles, San Francisco, Chicago, and Boston that arrest records not be released for private purposes, it appears that influential employers may often obtain such information notwithstanding legal or policy prohibitions. In St. Louis and Baltimore police records are regularly released for employment purposes, as is also the case in Arlington County."

[4] See Campbell, Public Access to Government Documents, 41 Aust. L.J. 73 (1967).

28 CFR §0.85 (1970), had been construed by the FBI as including not only federal, state and local governments, departments, and subdivisions as being eligible for receiving the services of the FBI, but also those subdivisions or agencies, such as hospitals, specifically authorized by statute or a local ordinance to exchange fingerprints.

In depositions taken in the case of Menard v. Mitchell, ___ F. Supp. ___ (Civil Action No. 39-68, June 15, 1971, it was stated that the F.B.I. would make criminal record checks in connection with employment applications or licensing for any governmental or quasi-governmental jurisdiction or agency. The Court in Menard found "that the Bureau is without authority to disseminate arrest records outside the Federal Government for employment, licensing or related purposes." Memorandum Opinion at p.16. While denying a motion for expungement, the court stated Menard's "arrest record may not be revealed to prospective employers except in the case of any agency of the Federal Government if he seeks employment with such agency. His arrest record may be disseminated to law enforcement agencies for law enforcement purposes." Memorandum Opinion at p.17.

Shortly thereafter the FBI terminated its services to all state and local agencies except those associated with law enforcement. The F.B.I. announcement stated:

> Acting on remand in Menard v. Mitchell, 430 F2d 486 (1970), United States District Judge Gerhard A. Gesell, District of Columbia, on June 15, 1971, handed down a Memorandum Opinion in this case (Civil Action No. 39-68) which prohibits the FBI from disseminating identification records in response to fingerprints submitted by state and local law enforcement and other government agencies in connection with non-law enforcement purposes. This prohibition also extends to Federally insured banks and savings and loan institutions as well as railroad police. This means that effective immediately the FBI can no longer accept for processing fingerprints taken in connection with licensing or local or state employment which were formerly submitted directly to the FBI from the regulatory agency or institution or through a local law enforcement agency. We will continue to process applicant prints where the position sought is directly with a state or local law enforcement or correctional agency, as such processing directly serves a law enforcement purpose. There are no other exceptions.

Letter to All Fingerprint Contributors, July 22, 1971 at p.2.

On 15 December 1971 Congress passed Public Law 92-184, 85 Stat. 627, entitled the "Supplemental Appropriations Act, 1972." Section 902 reads as follows:

> The funds provided in the Department of Justice Appropriation Act, 1972, for Salaries and Expenses, Federal Bureau of Investigation, may be used in addition to those uses authorized thereunder, for the exchange of identification records with officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions, and, if authorized by State statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing, any such exchange to be made only for the official use of any such official and subject to the same restriction with respect to dissemination as that provided for under the aforementioned Act.

On January 20, 1972, the FBI disseminated another Letter to All Fingerprint Contributors citing the above legislation as permitting "the exchange of identification records with Federally chartered or insured banking institutions and, if authorized by state statute and approved by the Attorney General of the United States (underlining supplied), with officials of state and local governments for purposes of employment and licensing." Letter to All Fingerprint Contributors at page 1. The Letter specifies that a state statute "must provide for fingerprinting as a requisite for the type of applicant position involved or for the type of license to be issued. Local and county ordinances, unless specifically based on applicable state statutes, do not satisfy this requirement." The Letter continued by requiring all applicant and licensee prints to be submitted through a single state agency only after an initial record check is performed at that level. Only if no disqualifying record or substantive information is found is it to be forwarded to the FBI.

See Task Force Report: The Courts 5 (1967) reporting the following:

> "The police decision whether to arrest must usually be made hastily, without relevant background information, and often under pressure of a pending disturbance. There is ordinarily no opportunity for considered judgment until the time when formal charges must be filed, usually the next step of the proceedings."

In commenting on the difficulties police have in making decisions under varying circumstances the Task Force Report: The Police 1 (1967) comments as follows:

> "The police did not create and cannot resolve the social conditions that stimulate crime. They did not start and cannot stop the convulsive social changes that are taking place in America. They do not enact the laws that they are required to enforce, nor do they dispose of the criminals they arrest."

7/ See Gregory v. Litton Systems, Inc., 316 F. Supp. 401 (S.D. Cal. 1970). See also UCR 1969 at 118 where it is reported that of the persons arrested in 1969 28% were blacks (blacks compose only 11% of the total population from the U.S. Bureau of the Census, Statistical Abstract of the United States: 1969 at 23).

8/ FBI arrest files show a very small proportion of dispositions, apparently because police departments submitting fingerprints and records are under no compulsion to do so. Menard Deposition No. 1. As recently as 1967 police records in the District of Columbia failed to show disposition on 8% of their records although required to do so by law. O'Connor and Watson stated that

> "It has been correctly pointed out that police records are often incomplete and, therefore, misleading. . . "

Juvenile Delinquency and Youth Crime: The Police Role, 60 (1964). The Task Force Report: Science and Technology 74 (1967), found the following:

> "The record may contain incomplete or incorrect information. The information may fall into the wrong hands and be used to intimidate or embarrass. The information may be retained long after it has lost its usefulness and serves only to harrass ex-offenders or its mere existence may diminish an offender's belief in a possibility of redemption."

9/ For example note the wide differences in penalties for the offense of possession of marijuana.

10/ In one case, an individual arrested for mail fraud was charged with 32 counts of larceny and possession of stolen mail. The record of arrest covered four pages without indicating that all charges were subsequently dismissed, Washington Post, Jan. 23, 1971, at B-1.

11/ The President's Crime Commission reported that each day about 1,000 fingerprint clerks of the FBI process about 23,000 fingerprint record submitted by agencies throughout the United States. The Challenge of Crime in America, 268 (1967).

12/ See Note Discrimination on the Basis of Arrest Records, 56 Cornell L. Rev. 470, 472 (1971).

13/ Three decisions of the Equal Employment Opportunity Commission have emphasized the point that asking for arrest records or about minor convictions is discriminatory per se. See Decision No. 71-1950, April 29, 1971, 3 EPD ¶6274; Decision No. 71-2089, May 19, 1971, 3 EPD ¶ 6253; and Decision No. 71-2682, June 28, 1971, 3 EPD ¶ 6288.

14/ On appeal the McConnell case was reversed. The opinion notes that it was not the "mere homosexual propensities" nor the likelihood of "a desire clandestinely to pursue homosexual conduct" that led to the reversal. It was McConnell's widespread efforts at publicity and his efforts to "foist" his concepts upon the university which was found to justify his rejection. The central holding in the District Court opinion, failure to show a connection between sex attitudes and duties as an employee, was not reversed. McConnell v. Anderson, ________ F.2d _________ (C.C.A. 8, 1971) (40 U.S.L.W. 2225)

15/

> "The merefact that a man has been arrested has very little if any probative value in showing that he has engaged in any misconduct. An arrest shows that someone probably suspected the person apprehended of an offense. When formal charges are not filed against the arrested person and he is released without trial, whatever probative force the arrest may have had is normally dissipated." Schware v. Board of Examiners, 353 U.S. 232, 241 (1947).

16/

> "The right to hold specific employment and to follow a chosen profession free from unreasonable governmental interference comes within the liberty and property concepts of the Fifth Amendment."

Appendix A

Methodology

The first step in the study was a survey of state civil service and juvenile statutes. A letter to personnel heads asked for job application forms and rules and regulations.

While collecting legal and administrative data we began to construct two questionnaires.[*] These were sent to those jurisdictions which responded to the initial letter, and included the personnel heads to whom the first letter had been sent. A special questionnaire was sent to correctional administrators and police chiefs in many of these jurisdictions. The basic purpose of the questionnaires was to ascertain the reported policies and practices of a large number of jurisdictions. An integral part of the project proposal was the choosing of six jurisdictions for careful and intensive on-site review to compare actual with reported practices. Following is a description of the methodology followed in the study.

Legal and Administrative Structure

The universe of states, counties and cities was restricted to include only those counties which were over 100,000 population and cities over 50,000 population.[**] No population restriction was placed on states. The potential universe thus included: (a) all states [50], (b) all cities with over 50,000 population [312] and (c) all counties with over 100,000 population [292].

---

[*] Copies of these questionnaires are available upon request from the Institute of Criminal Law and Procedure, 600 New Jersey Avenue, N.W. Washington, D.C. 20001.

[**] All demographic statistics, unless otherwise clearly indicated, were taken from the County and City Data Book, 1967 U.S. Bureau of the Census.

These 654 jurisdictions were mailed an initial inquiry regarding legal requirements and practices in the hiring of applicants with criminal records. This inquiry asked for the following four items: (1) any local ordinance, (2) rules and regulations (regular and any special rules for blue collar or custodial workers), (3) job application forms and (4) contractual provisions. Jurisdictions which did not respond to this query after several followup letter were not mailed the detailed questionnaires which were subsequently developed.

The states showed the highest response level with 49 (98%) states responding. Cities were next with 260 (83%), followed by the counties with 215 (74%). These jurisdictions were queried with a questionnaire concerning their policies in employing individuals with criminal records.

Table 1

Response Rate for States, Cities & Counties

Type	Potential Numbers	Number Return	Percentage
State	50	49	98
City	312	260	83
County	292	215	74
Total	654	524	80

This response rate was fairly high, from a low of 74% for the counties to a near perfect 98% for the states. Counties, being less developed in terms of organization, were expected to respond at a lower rate. Nevertheless, the rate is close to the 80% aimed for in the original proposal to the Department of Labor.

The sample is also representative in terms of getting responses from the major jurisdictions, although less so in the case of the counties. Of the 52 non-responding cities, 44 (84%) are in the bottom half of the sample in terms of ranking by population size. [illegible]ty-nine (94%) of the non-responding cities are below 100,000 in population. All the major population centers responded, although there is slight underrepresentation from smaller cities.

Of the non-responding counties, 44 (57%) fall in the bottom half in terms of ranking in population, and 40 (52%) have less than 200,000 population, thus replicating the response of smaller cities. But there are differences. Among the 50 largest counties, 10 (20%) did not respond; among the 62 counties with populations over 500,000, 12 (19%) did not respond; among the 100 largest counties, 21 (21%) did not respond.

In summary, the city and state response was excellent; the county response was reasonably representative.

These 524 jurisdictions comprised the universe for a detailed questionnaire which had as its goal a more comprehensive picture of employment standards and practices. It should be noted that more than one questionnaire was sent to each jurisdiction, as Civil Service Commissions as well as other selected important agencies were included in the sample. In the larger jurisdictions, in addition to the Civil Service Commission or Personnel offices, heads of correctional and police departments were included.

The response rates for this mail questionnaire were consistent with the findings established by the responses to the first letter.

Table 2
Response Rates for States, Cities and Counties For Mail Questionnaire

Type	Potential Numbers	Number Returned	Percentage
State	49	43	88
City	260	182	70
County	215	112	52
Total	524	337	64

The states had the highest response rate of 88%, followed by the cities with 70%. The counties were the lowest with 52%. The total response was also lower than the first letter (64%). In terms of validity, an excellent level was achieved with the states; a very good level with the cities.

The county response rate was considerably lower than the other two types despite at least two follow-up letters. Staff members of the National Association of Counties indicated that the response rate of our questionnaire was in many ways better than they had been able to achieve from their own members. Thus, while the actual county response rate is somewhat low, it is in other respects astoundingly high.

Site Visits

The 337 jurisdictions from which responses were received served as the universe from which the six areas were finally selected for intensive on-site study. The first basic criteria of selection was cooperativeness in responding to the questionnaire. In addition, the data received provided a base from which more detailed explorations could be launched.

A second basic consideration was that of size; three jurisdictions (Los Angeles, Chicago and New York) were immediately eliminated as being too large for the limited review possible under the terms of the grant. Large states were eliminated for the same reason.

A final basic consideration of selection related to the jurisdiction hiring policy as (a) unrestricted, (b) restricted or (c) totally restricted. If the hiring policy was "totally restricted", i.e., no individuals with criminal records considered for employment, the jurisdiction was eliminated since there would be no policy to examine.

As a result of the above screening devices the following number of jurisdictions were to be considered for an on-site visit.

Cities	105
Counties	48
States	12
Total	165

These jurisdictions were then categorized and compared according to the following demographic variables: (1) % non-whites, (2) SES (socio-economic scale, % unemployment, median income, median school years), (3) population change (size), (4) percent employees in local government, (5) population rank (relative to region), (6) regional or geographic location, (7) total crime index. Cities under 200,000 population and counties under 150,000 population were eliminated because the larger jurisdictions had the higher crime indices. They were thus more likely to have had extensive contact with individuals with criminal records. Five smaller states were eliminated for these reasons. This left 33 cities, 40 counties and 7 states.

Several considerations remained: (1) There should be a geographic spread; and (2) there should be one large city included in the six sites (all cities over one million population had been eliminated).

From the mass of data and varying factors, 14 jurisdictions were chosen (3 states, 7 cities and 4 counties) from which the final six would be selected. These jurisdictions were:

States
1) Michigan
2) North Carolina
3) New Jersey

Cities
1) Phoenix, Arizona
2) Cleveland, Ohio
3) Newark, New Jersey
4) Rochester, New York
5) Toledo, Ohio
6) San Francisco, California
7) New Orleans, Louisiana

Counties
1) Hennepin, Minnesota
2) Davidson-Nashville, Tennessee
3) Bernallilo, New Mexico
4) San Diego, California

The project staff had difficulty choosing the final six. An official from the granting agency, the Department of Labor, participated in the final decision. From this session, the following choices emerged:

States
1) Michigan--Mid-west, industrial, large cities, high % non-white, large population

Cities
2) San Francisco, California--West coast, large, progressive

3) Phoenix, Arizona--Southwest, fast growing

4) Newark, New Jersey--Northeast, large non-white population, many problems

Counties
1) Davidson-Nashville, Tennessee--Southeast, metropolitan government

2) Hennepin, Minnesota--Midwest, progressive, largely white

These choices gave balanced geographical distribution, a range of population groups, both as to size and diversity, and represented different kinds of jurisdictions politically and structurally. This is not to suggest that these were the only six which could have been chosen, but that they do cover a range of variables.*

---

* See Appendix H for selected characteristics.

APPENDIX B

Analysis of Job Application Forms

For items which are excluded or included, there is some overlap because some application forms provide for the exclusion or inclusion of more than one item or use a combination of the two. Percentages in these same sections total less than 100 percent because many jurisdictional job application forms leave out items to be excluded or included.

CIVIL SERVICE LEVEL DIED							TYPE OF INQUIRY MADE on job applications regarding criminal records			No. of applications specifying certain items to be excluded					No. of applications specifying certain item to be included							
		Number of qualifying jurisdictions contacted: state, county, or city	Number of contacted jurisdictions making any form of response	Number responded expressed as percentage of those contacted	Number of jurisdictions submitting job application for study	Job applications expressed as percentage of those responding	No inquiry made	Inquiry includes arrests	Inquiry limited to convictions	"Minor" traffic offenses	Offenses where low fines ($10-$15) were assessed	Juvenile offenses	Offenses later expunged or sealed	Offenses occurring beyond specified period of time	Juvenile offenses	All traffic offenses	Any civil cases where applicant was defendant	Comprehensive inquiry regarding arrests, detention, juvenile records, etc.	Where held/detained in suspicion for investigation	Application warns of automatic police record check	Inquiry made regarding political affiliation	Application includes statement to effect that the existence of a criminal record was not an automatic bar to employment
	NO.	658	524	80%	442	67%	46	296	104	195	10	29	2	13	25	41	13	29	17	23	15	21
	GRAND TOTAL	As percentage of total applications studied (442)					10%	66%	24%	44%	2%	7%	3	--	6%	9%	3%	6%	4%	5%	3%	5%
SUB-TOTALS	STATE	50	49	99%	48	98%	1	26	21	26	0	7	1	1	0	0	3	2	0	1	2	5
		As percentage of total applications studied (48)					2%	54%	44%	56%	0	15%	2%	2%	0	0	7%	4%	0	2%	4%	11%
	COUNTY	296	215	73%	170	80%	33	94	43	81	4	5	1	1	8	4	6	14	3	11	6	8
		As percentage of total applications studied (170)					19%	55%	25%	48%	2%	3%	6%	6%	5%	2%	4%	8%	2%	6%	4%	5%
	CITY	312	260	83%	224	86%	12	172	40	88	6	17	10	0	17	37	4	13	14	11	7	8
		As percentage of total applications studied (224)					5%	77%	18%	40%	3%	8%	5%	0	9%	16%	2%	6%	6%	5%	3%	4%

APPENDIX C

Juvenile Statutes

	CHILD NOT CONSIDERED A CRIMINAL	ADJUD. NOT A CONVICTION	NO DISQUAL. FOR CIVIL SERVICE	LIMITED INSPECTION OF COURT RECORDS	NO PUBLICATION	COMMENTS AND FINGER-PRINTING STATUTES	LIMITED ACCESS TO POLICE RECORDS
ALABAMA	13/378	13/378	13/378	13/353 w/held from "indiscriminate" public inspection; state dept. of public welfare can inspect			
ALASKA	47.10.080(g)	47.10.080(g)	47.10.080(g)	47.10.090(a) w/ct. permission persons with legit. interest, state or city law enforcement agency	47.10.090(b) w/ct. permission only		
ARIZONA		8-207(A)	8-207(A)	(8-237 REPEALED*)	(8-237 REPEALED*)	8-238 (as amended 1969) court order may place sealed records in "safe place" with restricted access.	
ARKANSAS	45/233						
CALIFORNIA		Welfare §503					Gov.§62 53-54(s)
COLORADO			22-1-9(s) '66-'67	By ct. order 22-1-11(b)			
CONNECTICUT		17-72		15-57a persons with proper interest, by court order		29-12 finger-prints not to taken of persons under 16	

	CHILD NOT CONSIDERED A CRIMINAL	ADJUD. NOT A CONVICTION	NO [illegible] FOR CIVIL SERVICE	LIMITED INSPECTION OF COURT RECORDS	NO PUBLICATION	[illegible] AND FINGER-PRINTING STATUTES	LIMITED ACCESS TO POLICE RECORDS
DELAWARE	10-982 (b)	10/982(b)					
FLORIDA	39.10(3)	39.10(3)	39.10(3)	39. 03(6)(s) officers and employees of juv. ct., parents. Ct. order can open records 39.12(3) ct. order 1959 op. Atty. Gen. 059-134	1964 Op. Atty. Gen. 064-43 felony charge		
GEORGIA		24-2418(s)		24-2418(s) 24-2432(s)	24-2432(s) Ct. order needed, unless 2nd juv. adjud.	24-2432(s) inspection for statistical purposes 24-2418 court order req'd to finger-print juveniles	
HAWAII		(333-1 *REPEALED Evidently)				No statutes on this at all now; dealt with under family cts.	
IDAHO	16-1814(5) (s)	16-1814(5) (s)	16-1814(5) (s)	16-18(s) need a ct. order to withhold records from certain persons entitled to inspect; 16-1811(7)(s) police records not open to public		16-1811(6) (a) need consent of judge to take finger-prints or photos.	16-1811(7) (s)

	CHILD NOT CONSIDERED A CRIMINAL	ADJUD. NOT A CONVICTION	NO DISQUAL. FOR CIVIL SERVICE	LIMITED INSPECTION OF COURT RECORDS	NO PUBLICATION	COMMENTS AND FINGER-PRINTING STATUTES	LIMITED ACCESS TO POLICE RECORDS
ILLINOIS	702-9(s) Ch. 37	702-9(s) Ch. 37	Expressly allows exam. or record by civ. serv. comm. (702-9(s) Ch. 37)	702-10(s) Ch. 37 rep. of agencies, assns., news media can inspect w/ct. order 702-8(s) Ch. 37		37§ 702-8 Fingerprints/ photos not sent FBI w/out court order unless waived to adult court. See 43 Chicago-Kent L.R. 144 (1967) fingerprintes of juveniles	
INDIANA	9-3215(s)	9-3215(s)	9-3215(s)	9-3215(s) on ct. order it is public record		9-3215(s) ct. may order fingerprinting and photos	
IOWA				Legal record NOT confidential (232.54) Legal records juv. proceedings are public. Op.Atty. Gen., July 15, 1967		Op. Atty Gen. Oct.29, 1963 police have duty to take fingerprints of juveniles held for investigation.	68A.7(s) investigative reports confidential; arrest records public. 232.56 Records separated but are public.
KANSAS		38-801 (not deemed a criminal act on part of child)		38-805 need ct. order 38-815 (g) (s) to inspect		38-815(s) need ct. order to fingerprint and photo	
KENTUCKY	208.200	208.200				O.A.6. 66-253 cannot fingerprint juveniles w/	208.340(2) not open to public

	CHILD NOT CONSIDERED A CRIMINAL	ADJUD. NOT A CONVICTION	NO DISQUAL. FOR CIVIL SERVICE	LIMITED INSPECTION OF COURT RECORDS	NO PUBLICATION	COMMENTS AND FINGERPRINTING STATUTES	LIMITED TO POLICE RECORDS
KENTUCKY						out court order or unless convict in circuit court 433.234, 433. 236 juvenile arrested for shoplifting not to be fingerprinted	
LOUISIANA	13/1580	13/1580	13/1580	13/1586			44:3 until made public in trial or disposal of charge
MAINE	145.Me. 120, 73 A2d 128 (1950)	15/2502(1)		15/2606 Accessible to certain people, e.g., parent or directly interested person w/ct.'s consent		25-1548 all children attending public schools or equivalent shall be fingerprinted as requirement of matriculation.	
MARYLAND	26, §83(e)	26, §70-21	26, §83(e)			26/64 REPEALED	26, 70-23 public inspection allowed only by ct. order
MASSACHUSETTS	119/53	119/53 proceedings are not for crim. pros & not deter. of crim. guilt	119/60	119/60A need consent of justice of ct. to inspect			

	CHILD NOT CONSIDERED A CRIMINAL	ADJUD. NOT A CONVICT	NO DISQUAL. FOR CIVIL SERVICE	LIMITED INSPECTION OF COURT RECORDS	NO PUBLICATION	COMMENTS AND FINGER-PRINTING STATUTES	LIMITED ACCESS TO POLICE RECORDS
MONTANA	10-611	10-611			10-611--OK for news reps. to be at trial where a felony*10-633 no public except where a felony	See 23 Mont. L.R. 141(1961)	
NEBRASKA		43-206.03(5)	42-206.03(5)	43-206.04 ct. order necessary to inspect certain medical, psychological and sociological records		Recent (1963) change for Nebraska, formerly no statutes on the subject	
NEVADA	62.200	62.200 62.190 proceedings not crim. in nature	62.230	62.270 ct. order needed	62.190--hearings not open to public; no publication for 1st and 2nd offender 62.230		
NEW HAMPSHIRE	169:26	169:26		169:22 ct. discretion	169:27(s) need express permission of ct. unless a felony		
NEW JERSEY	2A/4-39	2A/4-39	2A/4-39			2A/4-21 fingerprinting allowed if chargeable w/indictable offense, subject to de-	

	CHILD NOT CONSIDERED A CRIMINAL	ADJUD. NOT A CONVICT	NO DISQUAL. FOR CIVIL SERVICE	LIMITED INSPECTION OF COURT RECORDS	NO PUBLICATION	COMMENTS AND FINGER-PRINTING STATUTES	LIMITED ACCESS TO POLICE RECORDS
NEW JERSEY						struction of found not guilty	
NEW MEXICO		13-8-65	13-8-65	*13-8-66 records are public*	*69 N.M. 473, P2d 147 Publication OK*		
NEW YORK	Family Ct. Act 29A/§ 781 66/913n	Family Ct. Act 29A/§ 781 66/913-n Penal Law 720.70	Family Ct. Act 29A/ §782--Holding Public office or getting lic. Penal Law 720.70 In accord, see 275NYS 702	Family Ct. Act §29A/§783--can use record in another ct. for sentencing;§784 police records open only on good cause by ct. order 66/ 913-0--discret.	Penal Law 720.70 Records confidential	66/913-0 fingerprints, records, photos confidential. Court in discretion, may permit inspection of records held by Dept. of Corrections	State has no inherent power over police dept. records & can't order record sealed or withheld. 260 NYS2d 2554(1965
NORTH CAROLINA	110-24	110-24	*110-24 no disqual. for pub. office*	110-24 w/held from indiscriminate public inspection	General public excluded from hearing 110-24		
NORTH DAKOTA		27-20-33	27-20-33	Need ct. order 27-20-51	By order of ct. 27-20-24 excludes public from hearing	27-20-53 Prints gen. taken only for certain felonies; kept only locally unless interest of national security. Subj. to destruction.	Not open to public 27-20-52

	CHILD NOT CONSIDERED A CRIMINAL	ADJUD. NOT A CONVICT	NO DISQUAL. FOR CIVIL SERVICE	LIMITED INSPECTION OF COURT RECORDS	NO PUBLICATION	COMMENTS AND FINGER-PRINTING STATUTES	LIMITED ACCESS TO POLICE RECORDS
OHIO	2151.35.8	2151.35.8	2151.35.8	For parents etc. reports available 2151.18; 2151.14 probation records not public		2151.31.3 court order req. to print except if prob. cause of felony; after use, all prints given to juv. ct. Subj. destruction.	
OKLAHOMA	(*20/891 REPEALED 1969*) 10/1127(s)	(*20/891 REPEALED*) 10/1127(s)	(*20/891 REPEALED*)	(*20/900 need ct. order, REPEALED 1969*) 10/1125(s) need ct. order 10/1127(s)		10/1127(s) fingerprinting OK w/ probable cause: maintained separately not open to public inspection.	
OREGON		419.543		419.567 persons authorized by ct.		419.585 prints may be taken only (1) ct. order, (2) where tried as adult, (3) where placed in correctional custody.	181.540 confidentiality of records except to state agencies and law anf. agencies

	CHILD NOT CONSIDERED A CRIMINAL	ADJUD. NOT A CONVICT	NO DISQUAL. FOR CIVIL SERVICE	LIMITED INSPECTION OF COURT RECORDS	NO PUBLICATION	COMMENTS AND FINGERPRINTING STATUTES	LIMITED [illegible] TO POLICE RECORDS
MICHIGAN		27.3178 (s98.1) proceedings are not criminal		27.3178 (598.28) ct. order may be needed 1944 Op. Atty. Gen. No. 0-2840			
MINNESOTA	260.211	242.12 (s) proceedings are not crim. pro. 260.211	260.211	260.161 requires ct. order to inspect		Op. Atty. Gen. 605-A-7, July 7, 1948 juvenile fingerprints may be taken without parents permission 299C.10 (1969) juveniles committing felonies to be fingerprinted.	260.161 requires ct. order to inspect
MISSISSIPPI	7185-09(s)	7185-09(s)		7185-20 use by dept. of public welfare OK; name can't be disclosed when records used for statistical purposes	*7185-09 (s) on 2nd adjudication mandatory publication of name	7185-09 allows access to records by state agency on request	
MISSOURI	211.271(1)	211.271(1)	211.271(4)	211.321(1) ct. order necessary; 1958 Op. Atty. Gen. No. 93 Waggoner--info. can be furnished to law enforcement officers		211.151 fingerprints not to be taken w/out consent of juvenile judge. 211.321 police records kept separate	211.321(1) not open to public except by ct. order

	CHILD NOT CONSIDERED A CRIMINAL	ADJUD. NOT A CONVICTION	NO DISQUAL. FOR CIVIL SERVICE	LIMITED INSPECTION OF COURT RECORDS	NO PUBLICATION	COMMENTS AND FINGER-PRINTING STATUTES	LIMITED ACCESS TO POLICE RECORDS
PENNSYLVANIA	11/261 11/269-417	11/261 11/269-417		11/245 withheld from indiscriminate public inspection 11/269-401; 269-423		11/269 et seq. applies to Allegheny County only	
RHODE ISLAND	14-1-40	14-1-40	14-1-40	8-10-21(s) ct. order		See 8-10-41(s) maintenance of inactive family ct. records	
SOUTH CAROLINA	15-1202	15-1202		15-1207 withheld from indiscriminate public inspection--need ct. order to get record w/held		15-1202 can't disqualify for license granted by public authority	
SOUTH DAKOTA	See comments 26-8-56	See comments 26-8-56	26-8-56	26-8-19.5(1968) 26-8-33 ct. order needed; withheld from indiscriminate public inspection	26-8-34 need ct. order to publish name	See 26-11-5 re commitment of child correction of crime, 26-11-4	26-8-19.6(1968) prints not sent to FBI or other agency except cases of felony or involving moral turpitude. 26-8-19.7(1968) taking child into temp. custody or detention is not an arrest nor does it constitute a police record.
TENNESSEE	37-233	37-233	37-233	37-251 not open to public without ct. order	37-253 (1970)	Maybe fingerprinted only with court order	Tenn. police records 37-252 not open for public inspec.

	CHILD NOT CONSIDERED A CRIMINAL	ADJUD. NOT A CONVICTION	NO DISQUAL. FOR CIVIL SERVICE	LIMITED INSPECTION OF COURT RECORDS	NO PUBLICATION	COMMENTS AND FINGERPRINTING STATUTES	LIMITED [illegible] TO POLICE RECORDS
TEXAS	2338-1 §13(s)	2338-1 §13(s)	2338-1 §13(s)	2338-1 §15	2338-1 §15 Hearing open to media if charged w/felony		
UTAH		55-1--105 (s)	55-10-105 (s)	55-10-116(s) w/ consent of judge	*55-10-94 (s) hearing not open to public generaly *unless felony	55-10-116(s) need consent of judge to take fingerprints unless it is a criminal proceeding	
VERMONT	33/654(s) child shall be found **delinquent**	33/662(s) (1968)	33/662(s)	33/663(s) certain conditions expounded. See 33/665(s)	33/651/(s)	33/664 prints to be taken/ used on "need to know" basis or by ct. order. Kept only locally unless interest national security. Subj. destruction. No photo in noncrim. Case w/out ct. order.	
VIRGINIA	16.1-179	16.1-179	16.1-179	16.1-162 withheld from public inspection gen.	16.1-162 hearings not public; judge may make name of offender pub. in crim. case	15.1-135 juveniles arrested for misdemeanors not to be fingerprinted	16.1-153 withheld from pub. inspec. & shown to person w/ legal int. & w/approval of judge

	CHILD NOT CONSIDERED A CRIMINAL	ADJUD. NOT A CONVICTION	NO DISQUAL. FOR CIVIL SERVICE	LIMITED INSPECTION OF COURT RECORDS	NO PUBLICATION	COMMENTS AND FINGER-PRINTING STATUTES	LIMITED ACCESS TO POLICE RECORDS
WASHINGTON		13.04.240		13.04230(s) ct. order needed		13.04.130 fingerprints or photo only w/consent of ct. 72.50.040 stat. prohibiting fingerprinting of juveniles under 18 repealed 1969.	
WEST VIRGINIA	49-7-3	49-7-3	49-7-3		49-7-3 need ct. order	49-7-24 rules & regs. power	51 Op. Atty. Gen 878 (1966) fingerprints may not be taking a detained juvenile unless charged.
WISCONSIN	48.38	48.38	48.38	48.78 records of county agencies, child welfare agencies, day care centers confidential unless ct. order 48.26 court rec. confidential		48.38 can disclose info. to qualified persons if in best int. of child or admin. of justice	48.26 need ct. order
WYOMING	14-109	14-109		14-113 persons having a legitimate int. therein on ct. order.	14-102(e) peace officers' rec. 14-108 closed hearing		14-102(e) not open to public inspection

	CHILD NOT CONSIDERED A CRIMINAL	ADJUD. NOT A CONVICTION	NO DISQUAL. FOR CIVIL SERVICE	LIMITED INSPECTION OF COURT RECORDS	NO PUBLICATION	COMMENTS AND FINGERPRINTING STATUTES	LIMITED ACCESS TO POLICE RECORDS
DISTRICT OF COLUMBIA	16-2308	16-2308	16-2308	11-1586 withheld from discriminate public inspec. rule or special ct. order for interest. persons, institutions & agencies to inspect	16-2307 persons excluded from hearing	D.C. Code 16-2333 fingerprints not disclosed to persons other than inves. officers, law enfor. or U.S. officers or court officials unless transferred to adult court. D.C. 16-2334 Provides for sealing of all records except fingerprint records. Metropolitan Police Youth Div. Order No. 4 (Oct.24,1969) Juveniles 16 or older chgd with felonies shall be fingerprinted only with prior approval of Youth Division.	16-2332 Police records confidential

	CHILD NOT CONSIDERED A CRIMINAL	ADJUD. NOT A CONVICTION	NO DISQUAL. FOR CIVIL SERVICE	LIMITED INSPECTION OF COURT RECORDS	NO PUBLICATION	COMMENTS AND FINGER-PRINTING STATUTES	LIMITED ACCESS TO POLICE RECORDS
DISTRICT OF COLUMBIA						The following not to be fingerprinted w/out approv. of Youth Division official above rank of Sergeant: Felony arrests of juveniles under 14, juvenile misdemeanor arrests, recidivists.	

APPENDIX D

STATE CIVIL SERVICE STATUTES

EVALUATION CODES

[illegible] Codes

Describes civil service provision stating or suggesting that employment within the state(or subdivision as applicable) is to be based upon such factors as "merit," "ability,""fitness," "capacity to perform the work", etc.

Describes provision that employment standards shall be established by rules promulgated by a civil service council or board; no standard is suggested by the statutory wording.

Describes civil service provision indicating that federal civil service standards shall be adopted where necessary, such as where a state agency may be receiving federal money.

Describes provision allowing state civil service aid to subdivision, or suggesting that state standards may be adopted by a subdivision.

Describes provision authorizing hiring but in which no standard is suggested by the statutory wording.

Describes a provision authorizing hiring but which expressly declares no civil service system is operative; employees' [illegible] be terminated at the pleasure of the hiring authority.

[illegible]ionary Codes

Describes civil service provision stating or suggesting that an incorrect statement in the application form is grounds for excluding the applicant from further consideration; includes statements such as "false statements in the application," "dishonesty," and "fraud in securing the appointment."

Describes provision permitting exclusion of applicants deemed unfit; provision may include any or all of the following: unfit "reputation," "character," or "morals."

Describes provision permitting exclusion of applicants deemed unqualified; no indication of applicable standards given.

Describes provision permitting exclusion of applicants upon possibly minor criminal violations; provision may exclude person found "not law-abiding," "unsatisfactory arrest record," "guilty of a crime", or convicted of "any crime".

Describes provision permitting exclusion of applicants upon relatively serious criminal violations; generally phrased in terms such as "convicted of a felony or a misdemeanor involving moral turpitude."

(cont-next page)

E6 Describes provision permitting exclusion of applicants upon significantly serious criminal violations; generally phrased in terms relating to conduct or crimes which were "infamous" or "notoriously disgraceful."

Firing Codes

F1 Describes provision stating that an employee may be fired for misconduct; for cause.

F2 Describes provision stating that an employee may be fired for the good of the service; for conduct incompatible with public service.

F3 Describes provision stating or suggesting that an incorrect statement in the original application form is grounds for dismissal; includes such statements as "mistatements in the application," "fraud in securing appointment,", or "dishonesty".

F4 Describes provision stating that an employee may be fired for criminal conduct; includes statements such as "conviction of a crime", "violation of the law" and conviction/violation involving felony or moral turpitude. (In one jurisdiction includes plea or verdict of guilty, or conviction following a plea of nolo contendre.)

F5 Describes provision authorizing the firing of employees but without providing statutory standards; includes provisions where standards are to be promulgated by a civil service council and also provisions where the reasons are to be given to the employee in writing.

Right-of-Appeal Codes

A1	Describes provision stating that an applicant who is rejected or excluded from further consideration has a right to appeal the decision.
A2	Describes provision indicating that a right of appeal exists without indicating standards; includes where standards may be promulgated by civil service council.
A3	Describes provision providing that a fired employee shall be given a written statement of the reasons therefore; no indication given that the employee has either a formal right of appeal or right to a hearing.
A4	Describes provision indicating an apparent right to a full hearing with a statement of the reasons for dismissal to be given to the employee.
A5	Describes provision indicating an apparent right to a full Due Process Hearing and/or the right to counsel expressly stated.

State	State Civil Service		County Civil Service	Municipal Civil Service	
Alabama	55-293	H1		37-50	H1
Ala. Code	55-305	E1		37-74	H1
(1958)	" "	E2		55-299	H4
(Supp.1969)	" "	E5		37-50	F2
	" "	E6			
	55-315	F2			
	" "	F5			
	55-315	A4			
Alaska	39.05.010	H1			
Alaska Stat.	39.25.010	H1			
Ann. (1962)	39.25.150	H1			
(Supp.1970)	39.25.160	E1			
	39.25.170	A5			
Arizona	38-904(7)	H2			
Ariz. Rev.	38-911	E1			
Stat. Ann.	38-932	E1			
(1956)	38-904(16)	F1			
(Supp.70-71)	38-912	F4			
	38-910	A5			
Arkansas				19-1423(2)	H1
Ark. Stat.				19-1419	H2
Ann. (1947)				19-1423(5)	E1
(Supp.1969)				19-1423(10)	A4
				19-1433	A4
				19-1303(2)	H1
				19-1303(5)	E1
				19-1305	A4

State	State Civil Service		County Civil Service		Municipal Civil Service	
California	GOV 18500(2)	H1	GOV 31103	H1	GOV 45000	H1
	GOV 18935	E1	GOV 31108	F5		
	" "	E3	GOV 31108	A5		
Cal. Gov't	" "	E5				
Code	" "	E6				
(West 1963)						
(Supp.1971)	GOV 19572	F2				
	" "	F3				
	" "	F4				
	GOV 19574 to 19583	A5				
Colorado	26-5-9	H1				
Colo. Rev.	26-5-23	F1				
Stat. Ann('63)	26-5-23	A5				
(Supp.1969)						
Connecticut	5-195	H1			7-409	H1
	5-219	H1			7-413	H1
Conn. Gen.	5-221	H1			7-413	E6
Stat. Ann.					7-419	F5
(1958)	5-221	E1				
(Supp.70-71)	" "	E4				
	5-202	F1				
	5-240(c)	F1				
	" "	F2				
	5-221a	A1				
	5-202	A2				
	5-240(c)	A4				

State	State Civil Service		County Civil Service		Municipal Civil Service	
Delaware	29-5901	H1				
Del. Code	29-5917	H1				
Ann. (1953)	29-5920	E1				
(Supp.1968)	" "	E6				
	29-5930	F5				
	29-5949(d)	F1				
	29-5949(a)	A2				
Florida	110.022(d)	H1				
Fla. Stat.	110.061(1)	F1				
Ann. (1960)	110.061	A4				
(Supp.71-72)						
Georgia	40-2207	H1				
Ga. Code	40-2207(b)	H3				
Ann. (1957)	40-2208	F1				
(Supp.1970)	40-2208	A2				
Hawaii	76-1	H1	76-4	H1		
Hawaii	76-13(5)	H1	76-71	H4		
Rev. Laws	76-18	H1	76-79	H4		
(1968)	76-29	E1				
(Supp.1970)	76-18	E2				
	76-46	F1				
	" "	F2				
	76-45	A4				
	76-46	A4				
	76-47	A5				
Idaho	67-5301	H1			50-1601	H1
Idaho Code	67-5309(e)	H1			50-1604	H1
(1949)	67-5306	H3			50-1604	E1
(Supp.1969)	67-5309(n)	F2			" "	E2
	" "	F3			" "	E5
	" "	F4			50-1604	F1
					" "	F2

State	State Civil Service		County Civil Service		Municipal Civil Service	
Idaho (continued)	67-5316	A2			" "	F3
					" "	F4
					50-1609	F1
					50-1609	A5
Illinois **Ill. Ann. Stat.** (1967) (Supp.1971)	127-63b102	H1	Cook County			
	127-63b108b.1	H1	34-1110	H1		
	" "	H3	34-1110	E2		
	127-63b113	E1	34-1118	F5		
	127-63b108b.1	E2	34-1118	A5		
	127-63b111	F1				
	127-63b108b.16	F5				
	127-63b110(6)	A4				
	127-63b111	A5				
Indiana **Ind. Ann. Stat.** (1961) (Supp.1970)	60-1301	H1			60-1337	H4
	60-1316	H1				
	60-1317	H1				
	60-1345	H3				
	60-1317	E1				
	" "	E4				
	" "	E6				
	60-1316	E2				
	60-1335	F1				
	60-1342	F4				
	60-1335	A4				
	60-1336	A4				
	60-1349	A4				
	60-1350	A4				

State	State Civil Service		County Civil Service		Municipal Civil Service	
Iowa					365.8	H1
Iowa Code					365.17	E2
Ann. (1949)					" "	E5
(Supp. 1971)					365.18	F1
					365.19	A4
					365.20	A4
					365.27	A4
Kansas	75-2925	H1			13-2201(b)	H1
Kan. Stat.	75-2935(2)	H1			13-2201(c)	F1
Ann. (1969)	75-2939	H1			13-2201(c)	A2
(Supp. 1970)	75-2940	E1				
	" "	E6			13-2207	H1
	75-2939(2)	E2			13-2213	F1
	75-2949(1)	F2			13-2215	F1
	75-2940(2)	A1			13-2213	A4
	75-2949	A4				
					13-2275	H1
					13-2290	H1
Kentucky	18.120	H1	78.405	H2	90.160	H1
Ky. Rev.	18.170	H1	78.450	F1	90.180	H1
Stat. Ann.	" "	H3	78.440	F2	90.190	F5
(1969)	18.210(3)	H1	" "	F5	90.190 (2)	A4
	18.210(7)	E1	78.450	A5		
	" "	E6	78.455	A5	90.320	H2
	18.210(3)	E2			90.330	H2
	18.320(1)	F4			90.330	E4
	18.210(17)	F5			90.360	F1
	18.210(17)	A5			" "	F2
	18.270	A5			" "	F4
					90.360	A4
					90.370	A4

State	State Civil Service		County Civil Service		Municipal Civil Service	
Louisiana	Art. 14§15(A)(1)	H1			Art. 14§15(A)(1)	H1
	Art. 14§15(F)(2)	H1			Art. 14§15(E)(2)	E2
La. Stat.	Art. 14§15(I)	H3			Art. 14§15(O)(2)	A1
Ann. Const.	42:727(4)	H3			Art. 14§15(O)(1)	A2
(1955)	Art. 14§15(N)(1)	F1			Art. 14§15(N)(1)	A3
(Supp.1971)	Art. 14§15(N)(4)	F4			33:2398	H1
					33:2411	H1
					33:2412	E1
					" "	E2
					" "	E6
					33:2411	E2
					33:2412	F1
					" "	F4
Maine	5-673	H1				
	5-552	H5				
Me. Rev.	5-678	F1				
Stat. Ann.	5-678	A2				
(1964)	" "	A5				
(Supp.70-71)	5-751	A5				
	5-752	A5				
	5-753	A5				
Maryland	64A-18	H1	64A-39	H4	64A-39	H4
Md. Ann.	64A-40	E1	25-3(f)	H5	23A-2(19)	H1
Code(1957)	64A-18(c)	E2			23B-68	H1
(Supp.1970)	64A-33	F1				
	64A-34	F1				
	64A-40	F3				
	64A-33	A4				

State	State Civil Service		County Civil Service		Municipal Civil Service	
Massachusetts Mass. Gen. Laws Ann. (1966) (Supp.1971)	31-3(c)	H1			31-47	H1
	31-10	H1				
	31-2A(f)	H2				
	31-6A	H3				
	31-6B	H3				
	31-15D	H3				
	31-6	E2				
	31-17	E4				
	31-33	F1				
	31-43	F4				
	31-12A	A1				
	31-43	A5				
	31-45	A5				
Michigan Mich.Com.Laws Ann.Const.(1967) (Supp.1971)	Art. 11§5	H1	38.412(g)	H1	Art. 11&6	H1
	Art. 11§5	A2	38.416	F5	38.458(g)	H1
			38.416	A5	38.462	F5
Minnesota Minn.Stat. Ann.(1970) (Supp.1971)	43.09(4)	H1	43.31	H4	43.31	H4
	43.13(1)	H1			44.071(1)	H1
	43.14(1)	E1			44.07(1)	E2
	" "	E6			44.08(1)	F1
	43.13(2)	E2			44.08(1)	A4
	43.24(1)	F1			44.09	A4
	43.14(2)	A1				
	43.24	A3				
Mississippi Miss. Code Ann.(1942) (Supp.1970)					3825-3	H1
					3825-33	H1
					3825-40	F1
					3825-39	F2
					" "	F3
					3825-40	A5

State	State Civil Service		County Civil Service	Municipal Civil Service	
Missouri	36.150	H1		74.720	H1
	36.170	H1		74.740	F1
Mo. Ann.	36.180	E1			
Stat. (1969)	" "	E4		75.630	H1
(Supp.70-71)	" "	E6		75.710	F1
	36.170	E2			
	36.150	F1		78.350	H1
	36.380	F1		78.360	F1
	" "	F2			
	36.200	A1			
	36.390	A1			
	" "	A2			
Montana	Mont. Rev. Codes Ann. (1947) (Supp.1969)				
Nebraska	81-1301	H1		16-218	H1
Neb. Rev.	81-1302(14)	H2			
Stat. (1966)	81-8106	H3		19-652	H1
(Supp.1969)	81-1307(3)(b)	F5		19-653	H1
	81-1311(2)(d)	F5		19-652	E2
	81-1319	A2		19-656	F1
	84-917	A2		" "	F2
				19-656	A3

State	State Civil Service		County Civil Service		Municipal Civil Service	
Nevada	284.150	H1	245.065	F5	268.405	F5
	284.210	H1	245.065	A3	268.405	A3
Nev. Rev.	284.240	E1				
Stat.	" "	E5				
(1969)	" "	E6				
	284.210	E2				
	284.385	F2				
	284.245	A1				
	284.385 to 284.395	A4				
New Hampshire	98:13X	H5				
N.H. Rev.	98:13X	A2				
Stat.Ann.(1955)	98:15	A2				
(Supp.1969)						
New Jersey	11:4-2	H1	11:1-1	H4	11:1-1	H4
N.J. Stat.	11:9-3	H1	11:21-3	H1	11:21-3	H1
Ann.(1960)	11:7-11	E3	11:22-48	H1	11:22-48	H1
(Supp.70-71)	11:9-2	E2	11:23-2	E1	11:23-2	E1
	" "	E3	" "	E4	" "	E4
	11:9-3	E2	" "	E6	" "	E6
	" "	E3	11:22-48	E2	11:22-48	E2
	11:9-6	E1	11:22-38	F5	11:22-38	F5
	" "	E4	11:22-46	F5	11:22-46	F5
	11:4-3.6	F1	11:23-2	A1	11:23-2	A1
	11:15-2	F1	11:22-38	A5	11:22-38	A5
	11:26D-1	F1	11:22-39	A5	11:22-39	A5
	11:15-5	F2				
	11:2A-1	A1				
	11:15-3	A3				
	11:15-4	A4				
	11:26D-1	A4				
	11:15-5	A5				

State	State Civil Service		County Civil Service		Municipal Civil Service	
New Mexico	5-4-36C	H1			14-12-4	H2
N.M. Stat.	5-4-40.1G	H3				
Ann. (1953)	5-4-46	H3				
(Supp.1969)	5-4-43	E1				
	5-4-36C	E2				
	5-4-36I	E2				
	5-4-40	A1				
	5-4-36H	A3				
	5-4-40	A3				
New York	Civ. Ser. 44	H1	Same as State		Same as State Civ. Ser. 23	H4
N.Y.	Civ. Ser. 50.1	H1				
Civ. Serv.	Civ. Ser. 50.6	H1				
(McKinney 1959)	Civ. Ser. 50.4	E1				
(Supp.69-70)	" " "	E4				
	" " "	E6				
	Civ. Ser., Rule 3.2	E2				
	" "	E4				
	Civ. Ser. 75.1	F1				
	Civ. Ser. 75.4	F1				
	Civ. Ser. 50.4	A1				
	Civ. Ser. 75.2	A5				
	Civ. Ser. 76.1	A5				
North Carolina	126-4(4)	H1	126-11	H1	160-200(37)	H2
	126-4(3)	E2				
N.C. Gen.	126-6	F1				
Stat. (1964)	" "	F4				
(Supp.1969)	126-12	F1				
	" "	F4				
	126-12	A4				
	126-13	A4				

State	State Civil Service		County Civil Service	Municipal Civil Service	
North					
Dakota	54-42-03	H1		40-44-10	H1
N.D. Cent.	54-42-06	H3		40-44-07	F1
Code (1960)				40-44-07	A2
(Supp.1969)					
Ohio	143.16	H1		143.30	H4
Ohio Rev.	143.13	H5			
Code Ann.	143.18	E1			
(1969)	" "	E5			
(Supp.1970)	" "	E6			
	143.16	E2			
	143.27	F1			
	" "	F2			
	143.26	A5			
Oklahoma	74-255	H6		961-28	H1
Okla. Stat.	74-805	H1		961-30	F5
Ann. (1962)	74-831	H1			
(Supp.70-71)	74-807	H3			
	74-839	H3			
	74-818	E1			
	74-833	F1			
	" "	F2			
	" "	F4			
	74-833	A5			

State	State Civil Service		County Civil Service		Municipal Civil Service	
Oregon	240.010	H1	241.205	H1		
Ore. Rev.	240.335	H1	241.225	H1		
Stat. (1969)	240.335	E2	241.230	H1		
	240.555	F1	241.225	E2		
	" "	F2	241.425	F1		
	240.560(4)	F1	" "	F2		
	240.560	A5	241.430	F1		
			241.430	A5		
			241.440	A5		
			241.445	A5		
Pennsylvania	71-741.2	H1	53-601	H5	53-601	H5
Pa. Stat.	71-502	H1			53-12634	H1
Ann. (1962)	71-741.213	H3			53-12635	H1
(Supp.1970)	71-741.902	E1			53-12633	E4
	71-741.501	E2			" "	E6
	71-741.807	F5			53-12638	F1
	71-741.807	A4			53-12638	A5
	71-741.950	A4			53-23431	H1
					53-23441	H1
					53-23446	H1
					53-23442	E1
					" "	E2
					" "	E4
					" "	E6
					53-23453	F1
					53-23442	A1
					53-23453	A3
					53-30451	F1
					" "	F2
					53-30451	A4
					53-30453	A4

Pennsylvania (continued)					53-[illegible]	H2
					[illegible]	E2
					53-39406	F1
					53-39408	A5
Rhode Island	36-4-18	H1	36-3-13	H4	36-3-13	H4
	36-4-50	H1				
R.I. Gen.	36-4-57	H3				
Laws Ann.	36-4-24	E1				
(1969)	" "	E6				
(Supp.1970)	36-4-18	E7				
	36-4-55	F1				
	36-4-38	F2				
	36-4-18	A1				
	36-4-38	A3				
	36-4-42	A5				
South Carolina	3-6-4	H5			47-703	H1
S.C. Code					47-784	H1
Ann. (1962)					47-703	E2
(Supp.1970)					47-759	E2
					47-705	F5
					47-705	A2
South Dakota	**S.D. Com. Laws Ann.** (1967) (Supp.1970)				9-14-14	H2
Tennessee	8-3101	H1			8-3118	H4
Tenn. Code	8-3202	H1			6-2032	F1
Ann. (1964)	8-3205	E1			" "	F2
(Supp.1970)	" "	E4			6-2032	A5
	" "	E6				
	8-3202	E2				
	8-3226	F2				
	8-3226	A2				
	8-3227	A2				

State	State Civil Service		County Civil Service		Municipal Civil Service	
Texas	Tex. Rev. Civ. Stat. Ann.(1959)(Supp.70-71)					
Utah	67-13-2(a)	H1	17-33-1(3)	H1	10-10-15	H1
Utah Code	67-13-15	H3	17-33-6	E1	10-10-21	F1
Ann.(1953)	67-13-14	F1	" "	E5	10-10-21	A5
(Supp.1969)	" "	F2	17-33-12	F1		
	67-13-14	A5	" "	F2		
			17-33-6	A1		
			17-33-12	A5		
Vermont	3-305(c)	H1				
Vt. Stat.	3-307	H3				
Ann.(1959)	3-315	A2				
(Supp.1967)						
Virginia	2.1-111	H1	15.1-598	H1	15.1-930	H5
Va. Code	2.1-114(5)	H1	15.1-599	F5	15.1-930	F5
Ann.(1950)	2.1-115	H1	--------------------			
(Supp.1970)	2.1-114(6)	A2	15.1-634	H1		
			15.1-635	F5		
Washington	41.06.010	H1			41.06.080	H4
Wash. Rev.	41.06.260	H3			35.58.370	H1
Code Ann.	41.06.170	F5			35.58.370	F5
(1961)	41.06.170	A5			35.58.370	A2
(Supp.1970)	41.06.180	A5				
	41.06.190	A5				

State	State Civil Service		County Civil Service		Municipal Civil Service	
West						
Virginia	29-6-1	H1	29-6-15	H4	29-6-15	H4
	29-6-8(3)	H1			8-5-11	H5
W. Va.	29-6-8(6)	E1				
Code Ann.	" "	E2				
(1966)	29-6-8(11)	F1				
(Supp.1970)	29-6-8(11)	A4				
	29-6-13	A4				
Wisconsin	16.01	H1	16.055	H4	16.055	H4
	16.10	H1	16.31	H1	17.12(4)	F5
Wis. Stat.	16.11	H1	16.31(3)	H1		
Ann. (1958)	16.13	E1	16.36	H1		
(Supp.70-71)	" "	E4	16.38	F5		
	" "	E6	16.38	A2		
	16.11	E2				
	16.24	F1				
	16.13(2)	A1				
	16.24	A4				
Wyoming	9-280(4)	H1				
Wyo. Stat.	9-282	H2				
Ann. (1957)	9-282	F5				
(Supp.1969)	9-283	A2				

APPENDIX E

Licensing Restriction

APPENDIX E

The following chart gives an indication of licensing restrictions as they affect persons with criminal records.[*]

Data in horizontal columns preceeded by "I" indicate the number of states with express provisions noting that a criminal record may affect the initial application for a license. Columns preceeded by "R" indicate the number of states with express provisions that a criminal record may affect licensing renewal.

Vertical columns give a general indication of what type of criminal record will affect what licensed occupation. Those classifications are as follows:

"Good Moral Character" - An applicant must satisfy the licensing board that he has good moral character to obtain a license.

"Enumerated crime" - These statutes enumerate some specific criminal offense, rather than a general classification such as those following, which will lead to a denial of a license.

The remaining categories (felony, felony involving moral turpitude, misdemeanor, misdemeanor involving moral turpitude, crime involving moral turpitude)include those statutes specifying a particular type of criminal offense which will lead to the denial of a license.

---

[*] Data regarding the number of states in which a given occupational classification is licensed comes from Table C, Manpower Research Monograph No. 11, U.S. Department of Labor, 1969. Data shown is approximate due to lack of uniformity in occupational classifications from state to state.

OCCUPATION[1]	No. States Licensing[2]	No. States Req. Bonding	I=Initial Reqs. R=Renewal Reqs.	No. States Specifying Criminal Offense as Affecting Employment: Good Moral Character	Enumerated Crime	Felony	Felony w/ Moral Turp.	Misdemeanor	Misdem. w/ Moral Turp.	Crime w/ Moral Turp.
Accountant, certified public	50	1	I:	42	4	6	0	0	0	3
			R:	25	20	23	0	1	0	12
Agent, employment	1	26	I:	25	0	0	0	0	1	0
			R:	13	2	2	0	7	1	2
Agent, insurance	50	4	I:	38	1	2	0	0	1	6
			R:	23	7	12	0	0	1	7
Architect	50	0	I:	43	0	1	0	1	0	3
			R:	16	9	8	1	1	2	8
Attorney	50	0	I:	29	0	3	0	0	0	0
			R:	20	5	0	1	3	2	7
Auctioneer	42	13	I:	8	0	0	0	0	0	0
			R:	[illegible]	0	4	0	0	0	5
Bail bondsman	18	2	I:	16	0	6	2	0	0	2
			R:	8	0	7	2	0	0	2
Barber	50	0	I:	43	2	18	1	0	0	2
			R:	30	1	28	1	0	0	6
Beautician/cosmetologist	50	1	I:	44	2	17	2	0	1	2
			R:	28	2	21	2	0	1	3
Boat engineer		0	I:	0	0	0	0	0	0	0
			R:	0	1	0	0	0	0	0
Boxer/wrestler (including announcer, judge, manager, watchmaker, physician, promoter, referee, second, ticket seller, timekeeper, trainer)	39	7	I:	4	0	0	0	0	1	0
			R:	5	1	0	0	0	1	0
Chiropodist/podiatrist	50	0	I:	42	1	8	0	0	1	13
			R:	31	7	14	1	1	2	28
Chiropractor	46	0	I:	40	9	10	1	0	2	21
			R:	31	15	12	1	0	2	28
Civil service		0	I:	0	0	1	0	0	1	0
			R:	0	0	1	0	0	0	1
Collection agent/debt collector	23	12	I:	12	7	2	0	0	0	8
			R:	4	4	2	0	0	0	4

[1] Data Approximate due to lack of occupational classification uniformity.

[2] Data from Monograph No. 11, Dept. of Labor (See text)

OCCUPATION	No. States Licensing	No. States Bonding	I=Initial Reqs. R=Renewal Reqs.	No. States Specifying Criminal Offense as Affecting Employment						
				Good Moral Character	Enumerated Crime	Felony	Felony w/ Moral Turp.	Misdemeanor	Misdem. w/ Moral Turp.	Crime w/ Moral Turp.
Contractors (excluding plumbing/ electrical)	36	11	I:	11	0	4	1	0	1	3
			R:	6	1	3	1	0	1	1
Dental hygienist	50	0	I:	38	2	7	2	0	2	2
			R:	28	6	14	6	0	6	11
Dentists		0	I:	43	3	10	3	0	2	6
			R:	36	9	23	9	0	10	23
Detective (private)/guard	37	16	I:	24	5	14	1	1	1	8
			R:	11	7	12	1	1	0	10
Driver-training instructor	23	1	I:	16	4	5	0	0	0	3
			R:	7	4	4	0	1	0	3
Drivers and Chauffeurs		1	I:	9	1	1	0	0	0	0
			R:	4	8	15	0	1	0	0
Drycleaner/dyer/presser	17	0	I:	1	0	1	0	0	0	0
			R:	0	0	0	0	0	0	0
Drug manufacturer		0	I:	1	1	0	0	0	0	0
			R:	0	0	0	0	0	0	0
Electrician	30	1	I:	0	0	0	0	0	0	0
			R:	0	0	1	0	0	0	0
Electrologist/hypertrichologist	18	0	I:	7	0	1	0	0	0	0
			R:	3	1	3	0	0	0	1
Engineer, professional	50	0	I:	36	0	4	0	0	0	1
			R:	14	5	14	1	1	1	12
Exterminator/fumigator/ pestcontroller	29	3	I:	2	0	2	0	0	0	2
			R:	0	1	1	0	0	0	0
Harbor pilot/master pilot	28	3	I:	6	0	0	0	0	0	0
			R:	2	0	0	0	0	0	0
Hawker/peddler/handler	44	4	I:	6	0	0	0	0	0	0
			R:	3	2	0	0	0	0	1
Healing arts practitioner	1	0	I:	2	0	0	0	0	0	0
			R:	2	1	2	0	0	0	0
Hearing aid dealers		0	I:	0	0	0	0	0	0	0
			R:	0	0	0	1	0	1	0

OCCUPATION	No. States Licensing	No. States Req. Bonding	I=Initial Reqs. R=Renewal Reqs.	No. States Specifying Criminal Offense as Affecting Employment						
				Good Moral Character	Enumerated Crime	Felony	Felony w/ Moral Turp.	Misdemeanor	Misdem. w/ Moral Turp.	Crime w/ Moral Turp.
Morticians	44	0	I:	49	2	16	3	0	2	21
			R:	28	3	20	3	1	2	30
Motor vehicle dealer/salesman	28	13	I:	13	6	3	1	1	1	2
			R:	9	9	5	1	1	1	3
Motor vehicle mechanic	3	0	I:	0	2	[illegible]	[illegible]	0	0	0
			R:	0	1	[illegible]	[illegible]	[illegible]	0	0
[illegible]	13	0	I:	0	0	0	[illegible]	[illegible]	[illegible]	[illegible]
			R:	0	0	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	I:	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
			R:	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	I:	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
			R:	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	I:	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
			R:	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Optometrist	[illegible]	[illegible]	I:	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
			R:	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Osteopath	50	0	I:	34	[illegible]	[illegible]	[illegible]	0	2	[illegible]
			R:	26	[illegible]	[illegible]	2	0	5	[illegible]
Pawnbroker	30	21	I:	13	0	[illegible]	0	[illegible]	[illegible]	[illegible]
			R:	[illegible]	0	[illegible]	[illegible]	0	[illegible]	[illegible]
Pharmacist	50	0	I:	[illegible]	5	[illegible]	0	[illegible]	[illegible]	[illegible]
			R:	[illegible]	[illegible]	[illegible]	0	2	[illegible]	[illegible]
Physiotherapist	50	0	I:	44	14	[illegible]	3	0	[illegible]	[illegible]
			R:	28	19	[illegible]	3	[illegible]	[illegible]	[illegible]
Physician surgeon	50	0	I:	48	[illegible]	11	0	0	0	16
			R:	36	28	26	2	0	3	[illegible]
Plumber/gasfitter	39	4	I:	5	0	[illegible]	0	0	0	[illegible]
			R:	6	1	4	[illegible]	0	0	[illegible]
Psychologist	37	0	I:	29	1	[illegible]	2	0	1	[illegible]
			R:	13	3	[illegible]	3	0	2	[illegible]
Racing personnel		0	I:	0	0	0	0	0	0	[illegible]
			R:	0	0	0	0	0	0	[illegible]

OCCUPATION	No. States Licensing	No. States Req. Bonding	I=Initial Reqs. R=Renewal Reqs.	[illegible] Criminal Offenses as Affecting Employment: Good Moral Character	Enumerated Crime	Felony	Felony w/ Moral Turp.	Misdemeanor	Misdem. w/ Moral Turp.	Crime w/ Moral Turp.
Repairman/mechanic: electrical app,iance	15	0	I:	1	0	0	0	0	0	0
			R:	0	0	0	0	0	0	0
Salesman: Firearms	24	0	I:	0	0	1	0	0	0	0
			R:	0	1	1	0	0	0	0
Salesman: Real estate	50	9	I:	39	7	4	0	0	0	5
			R:	25	23	11	0	0	1	11
Sanitarian	32	0	I:	6	0	3	0	0	0	0
			R:	3	0	3	0	0	0	0
Securities advisor/counselor	4	13	I:	23	5	11	0	8	1	0
			R:	13	6	14	1	10	1	0
Social worker	6	0	I:	2	0	1	0	0	1	1
			R:	1	0	2	0	0	1	1
Teacher	50	0	I:	23	1	0	0	0	0	1
			R:	34	3	5	1	1	0	8
Technician, medical laboratory	19	0	I:	4	0	1	0	0	0	2
			R:	3	1	3	0	0	0	2
Veterinarian	50	0	I:	38	9	12	4	0	0	10
			R:	28	13	24	5	0	0	22
Warehouseman	9	16	I:	2	0	0	0	0	0	0
			R:	0	0	0	0	0	0	0
			I:							
			R:							
			I:							
			R:							
			I:							
			R:							
			I:							
			R:							
			I:							
			R:							
			I:							
			R:							

APPENDIX F

AN EYE FOR AN EYE

H. Jack Griswold, Mike Misenheimer
Art Powers, Ed Tremanhauser

1970

Reprinted with the permission of publishers,
Holt, Rinehart and Winston

Chapter 21

The Ex-Con

> The descent to hell is easy
>   The gates stand open day and night
> But to reclimb the slope
>   And escape to the upper air
> This is labor. . . .
>
> ____VERGIL
> Aeneid, VI

Hi, Joe! What's that? No kidding? You made parole. Congratulations. When are you leaving? Soon as you get a job and place to live, eh? Well, Joe, that may take a little time. You don't have anyone out there to give you a job, do you? I didn't think so. It's awful nice out there in the free world, Joe, but life ain't no bed of roses for the ex-con. What do I mean? Got a while? Sit down, Joe, and I'll explain some of the facts of life to you.

You see, Joe, you're a convicted felon. Know what that means? It means you've been tried, convicted, and sentenced for a crime, a felony. What is it? Oh, burglary. OK, and now you've done your time and are going back into the community. That's fine, Joe, but you're a convicted felon. That means a whole helluva lot of things. Means you've been labeled, stamped "defective," branded for the rest of your life. They've put you into a bin marked "scrap material," and they're never going to let you forget it. You've heard that old saw about paying your debt to society? Well forget it, Joe, because as far as the vast majority of people in the society is concerned you'll never be able to pay that debt.

Now when you get off parole you can write the governor and ask him to restore your civil rights. And he will. That means you can vote. But that's all you get back, Joe. All the rest of the barriers and obstacles are still up to constantly remind you that "Ex-Con" is indelibly stamped after your name.

In most of these United States an ex-con can never hold public office, Joe. And almost all professions are closed to you. Did you ever hear of an ex-con law enforcement officer, judge, university professor, schoolteacher, lawyer, physician, or accountant? How about an ex-con governor, mayor, senator, or representative? Yah, I know about that guy in Massachusetts, but he had been in office for years before they nailed him. Besides, how long was he on the scene afterwards?

Sure, I know you don't plan on running for President, Joe, but just hear me out, will you? Now you'll find that every state and local government has different laws and customs and practices on the subject of ex-cons. Some places an ex-con can't charter a corporation, other places they won't give you a barber's license, and in still others they won't let you run a public business like a restaurant. You see, any time you need a license for anything and you are an ex-con, you're in trouble.

What'd you say, Joe? A tavern? Forget it. You can't get a license to sell liquor or beer in this state or in any other state that I know of. Oh, you used to be an automobile salesman, eh? I think you better look for something else, Joe. You know you have to be bonded. And what bonding company is going to take you on, even if your boss will?

You see, Joe, if you figure it out, about 50 per cent of the jobs and occupations in this country are barred to you by law or practice because of your record. Rule out jobs in local, state, or national government, civil service jobs, the armed forces, all jobs involving a security clearance no matter how low. Add to that all public utilities such as light, power, gas, and phone. Then there are the professions and jobs dealing with the public where you're required to be licensed by any government authority. Top it off with any job that involves trust and the handling of money, and for the cherry, any job in which you need to be bonded. There you have it, Joe. A minimum of half the jobs in the country are automatically and forever out of bounds for you.

You might think that blue-collar jobs would be open to you, Joe, but an awful lot of them aren't. For example, hundreds of thousands of blue-collar jobs are in industries handling defense contracts. That means a security clearance. Almost all truck drivers and deliverymen are bonded today, as are many warehouse men. Did you know that the

FBI gets over ten million requests for fingerprint checks every year from employers?

Remember Richie? Locked over in 5 Block? He used to be a schoolteacher downstate, District 37. When he left here he tried to get work again as a teacher. No go, Joe. He's working for his brother-in-law as a plumber's helper. He can't get back into the profession because he's an ex-con.

I don't think you knew Smithy. He left before you got here. Smithy really tried to improve himself while he was here. Studied real estate for two years and took correspondence courses from the university. He's selling books door to door now. Encyclopedias or something. You see, he couldn't get a broker's license from the state, and he couldn't work as a salesman because they wouldn't bond him.

OK, OK, so all you want is a job, period. How many letters have you written out of here asking for a job? Twenty-three, eh? How many answers have you received? Four. That's very good, considering. Any of them offer you a job? I didn't think so. Look, Joe, your letter comes into some personnel office. They open it. Right away they see that little black box for your number and that heavy black line at the top that reads STATE PRISION. In the left-hand corner is the censor's stamp, and then the paragraph concerning rules and regulations for correspondence with prisoners. Well, they may read it out of curiosity and pass it around the office for a laugh. But you're not getting any job, Joe. You're labeled, pigeonholed, stigmatized. And if there was some guy in that office who was sympathetic, what the hell can he do? He's only an employee himself and has to hire according to the guidelines set up by management doesn't he? How many businessmen do you know that will hire a person through the mail, sight unseen, and from prison as well? See the odds you are bucking, Joe?

Now one way a lot of guys get a job from prison is to have a friend or relative go to bat for them. They go to their boss or someone they know and say, look, my son, or my brother-in-law, or my nephew, is getting out of jail. He made a mistake, but he's really a good boy, and a good worker too. How about it? Can you give him a job? That's how a lot of 'em get jobs.

And sometimes they have to go to a friend or employer and say, look, just say you'll give the guy a job. Write a letter to the parole board and tell them you'll hire him. Then when he gets out he can get a job of his own. Sure, that works sometimes, Joe, because you can always find some kind of work, even if it's washing dishes, once you are out on the bricks. It's the getting out that's rough.

What if you don't have anyone out there to intercede for you? Then it's rough, Joe. Not just in this state but in a lot of 'em. Guys have made parole and are still inside six months, a year, or more later because they can't get a job from inside. And I'm talking now about guys that are young and in good health. What does a guy do if he's like fifty or sixty years old? He rots, that's what he does. He slowly goes batty.

You know that 90 per cent of the guys in here have no trade, no real marketable skills. What can they do that millions of other guys already out there and with no record can't do? So maybe you're fifty years old, have no trade, and are an ex-con too. What kind of future do you think you'd have, Joe? A few of 'em are taken out of here by Sally--the Salvation Army--or by a minister who'll let the guy sweep up around the church in exchange for room and board. But so many of them just rot in prision, Joe. You see that old guy sitting by the wall playing checkers. Yah, that's the one. He's sixty-seven years old. Can go out any time he finds a job and a place to stay. Been eligible for release for two years, but he'll die here. That's what I said, Joe, die here. Sad, ain't it?

It's like that all over too, with a few exceptions. A few states will let you go out without a job if you have money in the bank, or if you're going to live with your parents and they say they'll take care of you until you get on your feet. And a few states have established what they call halfway houses where a guy can go after he gets the green light from the parole board. You live under supervision in these halfway houses, put on a suit during the day, and go out job hunting on your own. It's a fine idea, Joe , but it only affects like

1 or 2 per cent of the country's prison population. California, Michigan, Wisconsin, and Minnesota have this type of program, and the Feds too.

Then there's what they call the work-release program. That's designed especially for guys with families, you know, costing the state a lot of aid money. So they let the guy leave the joint to go out to work and come back each night after work. Then he can support his family while he's doing time. I guess it cuts down on a lot of nonsupport cases, huh?

Of course if you don't have a big family, or if you are doing more than a few years' sentence, or have a long record, or are in for a serious crime, well, you don't make the work-release program. I talked with a guy from your home state the other day, and he tells me that they have had a work-release program on the books for about two years now and maybe fifty guys have been eligible for it. In the last two years that state has processed like six thousand or seven thousand cons and only approved fifty for the work-release program. They screen them so good that if you make the work-release program you should never have been put in prison in the first place--you were already an A-number-one probation risk. Well, it's a start, Joe.

You've got a pretty good thing going, Joe. You're young and got some smarts. You even have a high school education, and that puts you in the top 10 per cent of the convict population. You even have some kind of job skill. Most of the guys in here have been ditch diggers, assembly-line workers, farm workers, waiters, dock workers, such like that. That's the old filtering process at work, Joe. The higher the socioeconomic class, the greater the education, the less it's going to be represented in prison. Most upper-and middle-class criminals are white collar. And the vast majority of white collar criminals don't even get into a courtroom. Out of those that do get hauled into court, a large percentage don't get convicted, and out of those that get convicted, a large percentage get put on probation. That leaves the slobs, Joe, like you and me. We're crude enough to use a crowbar or a pistol, or sleight of hand, instead of the more refined book juggling, misrepresentation, and under-the-table payoff for services rendered.

Now if you're out there on the bricks and looking for work, Joe, don't bother applying for any of those jobs I told you about and you'll save yourself a bundle of heartaches. Whenever you apply for any job, my advice is not to mention your record. That's right, lie to 'em. If they have a place on the employment application where it asks you if you've ever been convicted of a crime, put down N-O, no! If you don't, you're screening yourself out of 75 per cent of all jobs, and damned near 100 per cent of the better jobs. You have to look ahead too, Joe. Big Willie, the trustyland barber, has a brother working for one of the big steel companies. A friend got him the job, white collar too. That was seven, eight years ago. He's still on the same job, but guys who have only been with the company two or three years are moving right up the line to higher job classifications and better pay. Why? His boss told him why. He's got a record, and the company knows it because it's on his original employment application. His boss told him he was terribly sorry, that it wasn't his fault, but the higher-ups passed him up because fifteen years ago he served two years in prision. See, Joe, crime don't pay, because they ain't never going to let you up once they got you down. That's just the way it is.

Go ahead and tell 'em if you want to, Joe. You're taking a chance no matter what you do. If you tell 'em you don't get the job most of the time. If you don't tell 'em, and they find out, they fire you. You know Louie, the cellhouse clerk? He got a job and didn't tell 'em about his record. Louie's parole officer came around checking on him and blowed the job for Louie. How do you like them apples? And Gabby, the four block runner, went out and got a job that'll knock you out. He was hired as a credit investigator! Yah, handling confidential financial reports all day long. While he was still on parole too. His parole officer was an OK guy and said more power to 'em. Well, it took about two months because the employment application investigation isn't handled by regional offices but is done by the main office in New York. One day his boss calls him in, red-faced and all, and says to him, why didn't you tell us? Louie says, if I'd told you, would you have hired me? His boss says, of course not! Louie was canned.

Of course landing and keeping a job is only a small part of your problems, Joe. For example? For example, you have your parole officer to contend with, for the next couple of years. They're just like any other group of people, Joe. Some of them are nice guys, very sympathetic and willing to help you all they can. The majority of them are just people putting in their eight hours and look upon you as so much merchandise, so many crates of apples. They are the indifferent ones. Then there are the dogs, Joe. The dogs seem to hate the whole world and especially an ex-con. Some are ex-cops, and they think they are still on the force. Others are guys with eighteenth-century minds, troglodytes who creep out from under rocks and are naturally attracted to the job, as iron filings are attracted to magnets. Sure, they're definitely in the minority, but you gotta know they're out there. You might be unlucky enough to get one for your very own.

If you get one of these guys, Joe, he plays God. He can manipulate you like a puppet on a goddamn string. He'll tell you to be in by ten o'clock, he'll say you can't buy a car, or get credit anywhere, or drink a bottle of beer, or get married, or change your job, or leave the country, or be in the company of any disreputable people, or be caught in a bar or a whorehouse, or . . . well, these are the more or less standard rules, Joe, but your parole officer can make up as many rules as he wants. Maybe he's got a hangup on guarding the community against the likes of you. So you meet a girl, and you both want to get married.

Your parole officer tells you to bring the girl into the office so he can talk to her. If he can't change the girl's mind, he contacts the girl's parents and warns them about you. If the parents won't block it, your parole officer says, I want you to wait six months, until you are in better financial condition. Sometimes he thinks you'll ruin the girl, and sometime it's the other way around he thinks the girl is no good for you. Maybe he thinks the girl's a whore or something.

Maybe he's got a hangup on late hours, and he says to you, be in by ten at night. That's curfew time, Joe. And so he'll call you at ten-thirty or eleven o'clock, and you better be home or he may send you back to prison. Send you back for two, three years for being out late, and you're a grown man. Absurd, Joe, that's what it is. Say you're making out with a girl, Joe, and it's almost score time, and it's like nine-thirty on a Saturday night. What are you going to do? You know damn well what you're going to do. So maybe you get home at midnight. Midnight, Joe, on a Saturday night. And the next morning your parole officer's got a warrant out for your arrest for parole violation. Bang. Back you come in chains.

Or maybe he's a bug on drinking and says to you, no drinking, period. So he comes by your place one night, and you're sitting there in front of the TV set, feeling no pain. Not bothering a soul, but with a half-empty bottle on the table. He walks in, and bang!

I'm not trying to scare you, Joe. I'm trying to tell you what can happen, because it has happened. Look at Timmy over there by the fence.

Been back for almost a year now for having a few beers in a tavern. OK, OK, so he was warned twice by his parole officer. But does the punishment fit the so-called crime. A year in jail for having a couple of beers in a tavern?

Well, chances are you won't get that kind of parole officer, Joe, but you should know what some of 'em are like. Takes all kinds to make this world, kid.

What else? Plenty else, Joe. Say you leave here and go to the bigtown. Small towns are murder. You get into the city and get a place in a neighborhood where nobody knows you. But the cops know you, Joe. When you leave here the cops in the town you go to are sent a bulletin on you, and a fresh picture and set of prints. Also your address. The cops at headquarters send the information out to the local precinct, the one that covers your neighborhood. So the cops know you, Joe, and they keep a pretty good eye on you. That's their job. You've been sent down here for burglary. What happens when the grocery store down the block is broken into by neighborhood punks? You guessed it. They pick you up for questioning. You didn't do it, and maybe you convince them. After seventy-two hours they let you go. But now you've lost your job because you have not reported to work for three days and weren't able to make a phone call. What do the cops care. And your parole officer asks you what the hell are you doing getting picked up? Can't you keep out of trouble? OK, you get another job, maybe, and a few months later another place is broken into in the area, and it looks like your MO. Bang, they bust you. They smack you around a little to loosen you up, and tell you if you cop out they'll drop charges and just send you back as a parole violator. You scream, you holler. Your parole officer starts to think, where there's smoke, there's fire, and meanwhile you lost another job. The cops and the prosecutor see you as an easy conviction and you can clear up their books. If you get out of it, or if they happen to catch the guys that did it, you go out and try to get another, if you can. It's a merry-go-round, Joe.

The cops. Well listen, Joe, police harassment is a very serious problem in some areas, and in other areas it's practically nonexistent. It all depends, like getting the right or wrong parole officer. You have to avoid areas where you will be harassed.

Then there are your friends and relatives to contend with. It's not just strangers who will discriminate against you. No indeed. Some of your so-called best friends will put you down like right now. Even relatives. Why, my own sister hasn't spoken to me in years. You see, Joe, most people have to have somebody to put down, somebody to feel superior to, and you're a natural. Society has singled you out as the schmoo that they all can legitimately kick around. You're an official whipping boy for all the "decent" and "upright" folks.

Guys you went to school with, worked with, were in the service with--many of them won't know you when you get out. Be careful about speaking to them first, or you'll be embarrassed more times than you can count. They'll cut you dead. No use telling 'em, hey, I'm the same old Joe you once knew. I just made a mistake, but I paid my debt. Forget it. You are not going to be able to wipe out the stigma. You will never pay off that "debt."

You'll find things have changed a lot, Joe. Lots of the people you knew have moved away, or gotten married, gone into the service, what have you. Out of those that are still around, some will snub you, and a lot of the others will feel uneasy in your presence, especially in public. Yah, it's a shame, Joe, but that's the way it is.

So you may be pretty lonely for a time after you get out, until you get in with a new set of friends. And of course you can always find companionship if you want it, in the person of an ex-con or a gangster. There are hundreds of ex-cons and thieves running around out there. But, Joe, it's better to be a loner until you can establish new friendships, than to start hanging around with a bunch of ex-cons and thieves. Sure, some of the ex's are going straight and wouldn't commit a jaywalking offense in your company. But there are always some that are trying to straighten up. And they are always looking for rap buddies to share the danger, and later the time, when the old judge gets around to passing it out.

It's too easy for a couple of ex-cons to sit around feeling sorry for themselves and getting madder at the world with each passing day. Then, one day when your defenses are way down, maybe you're out of work, and broke, and have lots of debts to pay, and---well, that's when you might take the first step, that first little job, and then you're on the old merry-go-round. One thing about the merry-go-round, Joe. Once you get on it, you can't get off. The "easy" money coming in, and going out, fast. It's as hard to get off that merry-go-round as it is for an alcoholic to stop after that first little step or you're lost. Choose your companions wisely, Joe. Look at me. I'm a living example of what I just told you. Started messing around with an ex-con after I'd been out for six months, and six months later, back I came.

Is that all? Hell no, that ain't all. But I guess that's all the major problems, except one. And that one is your biggest problem, Joe. What's that? It's you, Joe. Yah, your biggest problem will be you. I'm talking about the way you're thinking and acting when you go out of here. I'm talking about negative attitudes, thoughts about striking back at the society, chips on your shoulder. An I'm talking about the effect this rotten joint has had on your mind.

You know and I know that a prison never did anyone any good. Those that have come through here and never come back, they did it in spite of the system, not because of it. No one knows what the rate of return is in this country, because all the agencies that are supposed to tabulate such things keep such sloppy records that even the experts are confused. There's a reason for it too. The reason is that the correctional system is protecting itself from the wrath of the public. If accurate statistics were kept, and made public, something would be done. Maybe not much, but something. We'll take a generally agreed-upon figure of 60 percent nationwide, and in some areas it's pushing 75 percent. That's a terrifically high failure rate for the nation's prisons aren't doing any kind of a job. They're a big bust. Any other institution, public or private, that had as great a record of continuous failure, decade after decade, hell, it wouldn'g have lasted out one year. Too many people just don't give a damn.

What I'm getting at, Joe, is that one reason it fails is because prison only influences a man negatively. The longer a man stays in prison, the smaller his chances of staying out and adjusting to life in the free world. They put you through a status degradation ceremony, stripping you---deliverately and with relish in some cases---of all self-esteem, self-respect, human sensibility, and sense of responsibility. This is designed to punish you, humble you, humiliate you, and shame you. And it destroys a little part of you, Joe. I've seen guys in here that have been literally destroyed, broken, turned into a mass of jelly, into vegetables. The society would be more just if they went ahead and killed them. And when they get through they boot you out the gate to live in the free world. Sure, a lot of guys fail to make it. It ain't suprising.

You see, Joe, when any living organism is immobilized, its vitality is impaired. Even if this immobilization is thought necessary for the future welfare of the organism, like a cast on a broken leg. But the society denies any responsibility for the impairment of the organism that results from imprisonment. It is this destruction of the personality, of the functionalism of the organism, that prevents a lot of guys from making it on the streets.

Yah, Joe, I know. As one wise old prison warden put it, you can't train men for freedom in conditions of captivity. What the guy going out of here needs is self-respect, self-discipline, and confidence. But the system denies this to him. That's why these places fail, Joe, and will always fail in the most miserable manner. Prison automatically precludes what you need for the street.

Well, Joe, there goes the yard whistle, time to line up and march back into the cellhouse. I'm hungry too. They ring the dinner bell in twenty-two minutes. Better button your shirt, Joe, or some screw will write you a bad-conduct report. I didn't mean to depress you, Joe. I just thought you ought to know that the world outside is ready and waiting with less than open arms.

--E.T.

APPENDIX G

Expungement Statutes

STATUTES EXPUNGING, SEALING, RETURNING "CRIMINAL" RECORDS

An "X" to left indicates presence of statute described below.
An "O" indicates a possibly applicable statute or one of limited application described below.

STATE	Fingerprints/P.	Arrest Records	State I.D. Files	Court Record	Juv. Fgrprints.	Juv.Arrest Recs.	Juv. Ct. Recs.			Notify FBI/Other	BRIEF DESCRIPTION OF APPLICATION/LIMITATION OF STATUTES
Alabama Ala. Code (1960)											None located.
Alaska Alaska Stat. Ann. (1970)							O				47.10.060(e)--5 years after sentence completed person may petition for sealing or State HEW may do so for him; court has discretion to seal; record of proceedings and record of punishment is sealed; sealing restores civil rights removed by conviction; no one may ever use sealed records for any purpose; this statute applies only to juveniles waived to superior court and convicted.
Arizona Ariz. Rev. Stat. Ann. (1968)							O				§8-247--person may petition or court may act on its own; must destroy record if 21, no criminal proceedings pending, and rehabilitated; files and records are destroyed; applies only to juveniles judged delinquent.
Arkansas Ark. Stat. Ann. (1947) (Supp. 1969)											None located.
California Cal. Penal Code (1963) ["P.C."] Cal. Welfare Code (19) ["W."]		O			X	X	X			O	P.C. §851.6 (as amended 1970) provides that a "certificate of detention" shall be issued where person released without charges, is arrested only for intoxication or arrested for being under influence of narcotics if sent to treatment facility. Since P.C. 11115 (as ammended 1967) requires submission of dispositions to State and FBI, if arrest report made, "detention" information apparently submitted also. P.C. §851.7 Persons who, while minors, were arrested and acquitted for a misdemeanor, or were discharged without a trial may obtain a sealing of their court records. Criticism of statute expressed in Sealing and Expungement of Criminal Records--The Big Lie, 61 Jr. Crim. Law, Criminology P.S. 378 (1970).

STATUTES EXPUNGING, SEALING, RETURNING "CRIMINAL" RECORDS

An "X" to left indicates presence of statute described below.
An "O" indicates a possibly applicable statute or one
of limited application described below.

STATE	Fingerprints/P.	Arrest Records	State I.D. Files	Court Record		Juv. Fgrprints.	Juv.Arrest Recs.	Juv. Ct. Recs.			Notify FBI/Other	BRIEF DESCRIPTION OF APPLICATION/LIMITATION OF STATUTES
California Continued				[redacted]								P.C. 1203.45 (as amended 1970) Persons who, while minors, were arrested but not convicted of a felony or misdemeanor involving moral turpitude may obtain order to seal court record if, to satisfaction of the court, rehabilitation has occurred. P.C. §11105.5(as amended 1967) where a juvenile record has been sealed, notice is to be sent to all officers and agencies that the State Bureau of Criminal Identification and Investigation had previously notified of the arrest or other proceedings against the minor. P.C. §11116 notice of sealing of records to be sent to Bureau of Criminal Identification and Investigation. NOTE: Government §62.53-54(in supp.) provides for separate police arrest files for juveniles as well as no public inspection. W.781 probation officer or person may file; required that no felony or misdemeanor of moral turpitude be committed during specified period and rehabilitation successful; required that person be 21 or 5 years after juvenile appeared before an officer of law enforcement agency or 5 years after termination of juvenile court jurisdiction; applies to records held by any law enforcement or public agencies including arrest records and court records; records are sealed; may be inspected only on petition by person who is the subject of the record; proceedings are then deemed never to have occurred; person may properly reply that no proceedings ever occurred; applies to any juvenile ever before a law enforcement agency or ever the subject of a petition filed in juvenile court. W. §§826, 1763 court record may be destroyed five years after termination of juvenile court's jurisdiction but the juvenile court record, minute book entries, dockets, and judgment dockets are not destroyed.

STATUTES EXPUNGING, SEALING, RETURNING "CRIMINAL" RECORDS

An "X" to left indicates presence of statute described below.
An "O" indicates a possibly applicable statute or one
of limited application described below.

STATE	Fingerprints/P.	Arrest Records	State I.D. Files	Court Record	Juv. Fgrprints.	Juv.Arrest Recs.	Juv. Ct. Recs.			Notify FBI/Other	BRIEF DESCRIPTION OF APPLICATION/LIMITATION OF STATUTES
Colorado Colo. Rev. Stat. Ann. (1969)					X	X	X				22-1-11(2)(a) Persons who were arrested as minors may petition the court or court may act on its own for an expungement of court records two (2) years after the termination of the juvenile court's jurisdiction or release from probation. 22-1-11(c)(i) provides for the sealing of juvenile records held by all agencies; the court must do this automatically where petition is made under 2-1-11(2)(a); petitioner has not been convicted of felony or crime of moral turpitude or as a delinquent since termination of jurisdiction or release from parole, and no such proceedings are pending; must be satisfactorily rehabilitated; if granted the court considers the proceedings to have never existed and petitioner may respond as such to inquiry; all agencies are given notice and no subsequent inspection of records is allowed without the minor's consent.
Connecticut Conn. Gen. Stat. Ann. (1958)	X	X				X	X				29-15 Persons arrested may, if found not guilty or if charges were nol prossed and if they have no prior criminal record, may request the return of fingerprints, pictures, and physical descriptions not later than 60 days after the court finding or dropping of charges. 17-17a Persons who were arrested as minors may petition the court, if not found delinquent, and all court records are to be destroyed. If found delinquent, two (2) years following discharge, a petition to destroy court records may be filed and it is in the court's discretion to grant. 54-90(19) Persons who were arrested and who have been found not guilty, or against whom charges were nol prossed or dismissed, shall have their police records erased automatically. NOTE: Arrest records reportedly are not actually erased but are only stamped "erased." Interview with staff attorney, Public Defender, Office, New Haven, Connecticut. S. Herr, Punishment By Record: A Report to the Connecticut Legislature on First Offenders;

STATUTES EXPUNGING, SEALING, RETURNING "CRIMINAL" RECORDS [4]

STATE	Fingerprints/P.	Arrest Records	State I.D. Files	Court Record		Juv. Fgrprints.	Juv.Arrest Recs.	Juv. Ct. Recs.			Notify FBI/Other	An "X" to left indicates presence of statute described below. An "O" indicates a possibly applicable statute or one of limited application described below. BRIEF DESCRIPTION OF APPLICATION/LIMITATION OF STATUTES
Connecticut Continued					[redacted]							Record Expungement and the Restoration of Status §IV-6 (Unpublished Manuscript, Dec. 4, 1970).
Delaware Del. Code Ann. (1953)					[redacted]							11-4332(i) (amend '69) Persons convicted of non-capital offenses may be granted probation and if they comply with its terms, "the plea or verdict of guilty entered by or recorded against such offender shall be stricken from the records of the court." This striking is mandatory, subsequent arrests notwithstanding. State v. Johnson, 270 A.2d 537 (1970). Does not set aside conviction as to "infamous crime" insofar as such conviction creates ineligibility to set in State Government. Fonville v. McLaughlin, 270 A.2d 25[illegible] (1970). Does not preclude consideration of conviction in later prosecution. State v. Robinson, 251 A.2d 552 (1969).
Florida Fla. Stat. Ann. (1960)					[redacted]	X	X	X				39.03(6)(a) Person arrested as minor may, if not found delinquent, or if found guilty of less than a felony (were he an adult) may petition the court which has discretion to destroy court records, fingerprints, and arrest records. 39.12(2) Juvenile records preserved until 10 years after last entry made then may destroy all except those orders permanently depriving parent of a child's custody. NOTE: Statute appears aimed only at bookkeeping problems, not the fact of the record's existence or contents.
Georgia Ga. Code Ann. (1933)					[redacted]			O				[illegible]2.1 (19) After 10 years from last entry court may destroy all juvenile records: up till then judge may allow "proper" parties to inspect; no expungement or erasure discussed.
Hawaii Hawaii Rev. Stats. ( )	X				[redacted]							28.54(1968) Persons arrested in writing may request, unless they are fugitives or have prior convictions, that fingerprints and photographs be returned to them if no charges have been preferred or if they were not convicted. These items shall be returned within 60 days of the request if the above conditions are met.

STATUTES EXPUNGING, SEALING, RETURNING "CRIMINAL" RECORDS

An "X" to left indicates presence of statute described below.
An "O" indicates a possibly applicable statute or one of limited application described below.

STATE	Fingerprints/P.	Arrest Records	State I.D. Files	Court Record		Juv. Fgrprints.	Juv.Arrest Recs.	Juv. Ct. Recs.			Notify FBI/Other	**BRIEF DESCRIPTION OF APPLICATION/LIMITATION OF STATUTES**
Idaho Idaho Code (1949)					[redacted]	X		X				**16-1816A Persons arrested as minors may, five years after the court's jurisdiction has terminated or he is released from detention, may petition the court which has the discretion to order the court order expunged. Successful petitioners may thereafter say to any inquiry that the proceedings never occurred.** **16-1811(6)(19) Juvenile fingerprints and photographs of local police will be ordered destroyed where there is no basis for court jurisdiction; or when juvenile is 21 if no violations after he is 18.** **19-2604 Where parolee's case is dismissed his civil rights are restored.**
Illinois Ill. Ann. Stat. (1963)	X	X			[redacted]							38 §206-5(as amended 1965) **Fingerprints are to be returned to persons arrested who are subsequently acquitted or released without conviction. These persons, if not previously convicted, may petition the court to have the arrest record expunged. The petition must be accompanied by a valid waiver of any claims against the arresting officer.**
Indiana Ind. Ann. Stat. (1965)					[redacted]	O	O	X				9-3215a(as amended 1967) When minors or persons who as minors were adjudged delinquent have reformed and been of good behavior for at least two(2) years, the court may require all police "office files and records" to be destroyed or oblitereated as well as "the entire file and record of the case, including docket sheets, index entries, court records, summons, warrants, or any other papers or records in the clerk's office or which have been produced by the sheriff or the chief of police in which case or the name of the child is mentioned." **NOTE:** Prior to amendment the person, in order to qualify, must not have been subsequently arrested for a delinquent act.

STATUTES EXPUNGING, SEALING, RETURNING "CRIMINAL" RECORDS

An "X" to left indicates presence of statute described below.
An "O" indicates a possibly applicable statute or one of limited application described below.

STATE	Fingerprints/P.	Arrest Records	State I.D. Files	Court Record		Juv. Fgrprints.	Juv.Arrest Recs.	Juv. Ct. Recs.			Notify FBI/Other	BRIEF DESCRIPTION OF APPLICATION/LIMITATION OF STATUTES
Iowa Iowa Code Ann. (1950)	X				[redacted]							749.2 (as amended 1969) The fingerprints of persons arrested shall, if the person is not convicted and has no fingerprints already on file, be destroyed. NOTE: Wording does not appear to mean persons with prior convictions but could include persons arrested for investigation and other offenses.
Kansas Kansas Stat. Ann. (1969)					[redacted]	O	O	O				38-815(h)(as amended 1965) The judge of juvenile court shall have the power to order the expungement of any record made of a person under 16 years of age and may hold in contempt any person failing to carry out this order
Kentucky Ky. Rev. Stat. Ann. (1969)					[redacted]							None located.
Louisiana La. Rev. Stat. (1967)					[redacted]							581.8 Provides that no information may be destroyed or surrendered until after five (5) years following the subject's death.
Maine Me. Rev. Stat. Ann. (1964)					[redacted]							None located.
Maryland Md. Ann. Code (1957)					[redacted]			X				26 §70-21 The Court, on its own motion or for good cause shown may order that juvenile records be sealed.
Mass. Mass. Gen. Laws Ann. (1958)					[redacted]							None located.

STATUTES EXPUNGING, SEALING, RETURNING "CRIMINAL" RECORDS

An "X" to left indicates presence of statute described below.
An "O" indicates a possibly applicable statute or one
of limited application described below.

STATE	Fingerprints/P.	Arrest Records	State I.D. Files	Court Record		Juv. Fgrprints.	Juv.Arrest Recs.	Juv. Ct. Recs.		Notify FBI/Other	BRIEF DESCRIPTION OF APPLICATION/LIMITATION OF STATUTES
Michigan Mich. Com. Laws Ann. (1967)	X				[redacted]			X		O	28.243 Statute uses strong language providing for mandatory return of fingerprints (no petition or request necessary) of those persons not previously convicted (minor traffic offenses not included) or charged with sex offenses against minors(under 16) where those persons are found not guilty or are released without charge. Mandamus may be had if necessary. NOTE: Prior to 19__ amendment, above statute required a request for return of fingerprints and photos within 60 days of decision. 28.243 Requires court to notify state and FBI as to final disposition, thus may be applicable here. 28.1274(101)(1965) Any person convicted of an offense or who pleads guilty to only one offense before their 21st birthday, not including traffic violations and those guilty of offenses with maximum punishments of life, may move the convicting court to set aside their convictions. The motion may not take effect until five (5) years after entry of plea or decision, and it is in the discretion of the court to make the order. 28.1274(102)(1965) Such persons shall be deemed not previously convicted.
Minnesota Minn. Stat. Ann. (1947)	X			O	[redacted]			O			299C.11(1957) The fingerprints of all persons not convicted, if there are no prior convictions within the last ten(10) years, shall be returned. 638.02(2)(19__) First offenders, upon satisfactory completion of their sentences, may petition the State Board of Pardons for a "pardon extraordinary." If a determination of "good character and reputation" is made, this pardon extraordinary may be granted and shall have the effect "of restoring such person to all civil rights, and shall have the effect of setting aside the conviction and nullifying the same and of purging such person thereof and such person shall never thereafter be required to disclose the conviction at any time or place other than in a judicial proceedings thereafter

STATUTES EXPUNGING, SEALING, RETURNING "CRIMINAL" RECORDS

An "X" to left indicates presence of statute described below.
An "O" indicates a possibly applicable statute or one of limited application described below.

STATE	Fingerprints/P.	Arrest Records	State I.D. Files	Court Record		Juv. Fgrprints.	Juv.Arrest Recs.	Juv. Ct. Recs.			Notify FBI/Other	BRIEF DESCRIPTION OF APPLICATION/LIMITATION OF STATUTES
Minnesota Cont'd												instituted." 1958 Op. Atty. Gen. 14[illegible] provides that a court order is required to alter or change juvenile records. None located.
[illegible]												[illegible]
Mont. Rev. Codes Ann. (1947)												[illegible]
Nebraska Neb. Rev. Stat. (1964)												[illegible] If adjudication is set aside all records shall be sealed but are available to anyone for good cause shown. 43.24[illegible] Upon completion of probation and/or supervision anyone may petition the court to set aside the adjudication. 43.241 Court will consider the rehabilitation of the juvenile and the seriousness of the disabilities of a record weighted against teaching respect for law.
Nevada Nev. Rev. Stat. (1969)				O								176.225 Upon the successful completion of probation, the court may allow the offender to withdraw his plea of guilty, or it is set aside, and the court shall then dismiss the accusations or information. Thereafter the defendant is released from all penalties and disabilities resulting from the offense or crime.

STATUTES EXPUNGING, SEALING, ANNULLING CRIMINAL RECORDS

An "X" to left indicates presence of statute described below.
An "O" indicates a possibly applicable statute or one
of limited application described below.

STATE	Fingerprints/P.	Arrest Records	State I.D. Files	Court Record		Juv. Fgrprints.	Juv.Arrest Recs.	Juv. Ct. Recs.			Notify FBI/Other	BRIEF DESCRIPTION OF APPLICATION/LIMITATION OF STATUTES
New Hampshire N.H. Rev. Stat. Ann. (1955)	X				[redacted]							**593:4 The fingerprints are to be destroyed of persons found not guilty, whose case is dismissed, or whose case is nol-prossed.**
New Jersey N.J. Stat. Ann. (1955)		O	O	O X	[redacted]	X	O	X				**2A:169-11(1968) Where a person convicted receives a suspended sentence, of only a fine, and receives no subsequent conviction for five years, he may petition the court for an order expunging "all records and is thereafter relieved of all disabilities as may have existed by reason thereof." NOTE: Op. Atty. Gen. No. 5, Feb. 26, 1953 and Op. Atty. Gen. No. 44, Oct. 28, 1953: order of expungement does not have attributes of full pardon.** **2A:168A-2(1968) An ex-offender may, unless convicted of high misdemeanor, apply for license or applications where he has achieved a "degree of rehabilitation not incompatible with welfare of society or aims and objectives of licensing authority."** **2A:168A-3(1968) A pardon, expungement order, or certificate of completion from a parole or probation board is sufficient evidence of the degree of rehabilitation.** 2A:164-28 Except in certain serious conviction cases (e.g., treason, kidnapping, arson, robbery), where a sentence is suspended or the defendant receives a fine not over $1000, and where no subsequent conviction occurs for ten (10) years, an individual may petition the court for an expungement of all records after which person is relieved of all disabilities. NOTE: Police have discretion to destroy fingerprints of persons accused of crime, but not those convicted. Fernicola v. Keenan, 136 N.J. Eq. 9, 39 A.2d 85 (1944). 2A:4-39.1(1969) Juvenile records may be destroyed five(5) years after the adjudication. The juvenile must petition the court; no adjudications against child during past 5 years; if no good reason is shown to the contrary, the records may be expunged except for certain ennumerated crimes.

STATUTES EXPUNGING, SEALING, RETURNING "CRIMINAL" RECORDS

An "X" to left indicates presence of statute described below.
An "O" indicates a possibly applicable statute or one of limited application described below.

STATE	Fingerprints/P.	Arrest Records	State I.D. Files	Court Record		Juv. Fgrprints.	Juv.Arrest Recs.	Juv. Ct. Recs.			Notify FBI/Other	BRIEF DESCRIPTION OF APPLICATION/LIMITATION OF STATUTES
New Jersey Continued												2A:4-21 Fingerprints of juveniles found not guilty or if charges dismissed, shall be returned to court for destruction. 47:3-9(i) Where record of conviction of disorderly person has been on file with county clerk for five years, the clerk may order the record destroyed or obliterated.
New Mexico N.M. Stat. Ann. (1953)												None located.
New York N.Y. Penal Law (19)	X											516 Provides that where an action or proceeding is terminated in favor of the accused, unless previously convicted elsewhere of an offense (including vagrancy or disorderly conduct), fingerprints and photos are to be returned on demand. NOTE: The New Criminal Procedure Law (§§160.10-160.40) appears to cover virtually all aspects of fingerprinting but makes no reference to above provision. NOTE: Case held state has no inherent power over juvenile records in police department and cannot order record sealed or withheld. Weisberg. v. Police Department of Village of Lynbrook, 260 NYS2d 554 (1965). See however, In re Smith and Vasquez, where the court took judicial notice that police records were available for sale and ordered destruction of all juvenile records and removal of juvenile surnames from police and court records. ("Smith" and "Vasquez" were pseudonyms.)
North Carolina N.C. Gen. Stat. (1965)												None located.

STATUTES EXPUNGING, SEALING, RETURNING "CRIMINAL" RECORDS

An "X" to left indicates presence of statute described below.
An "O" indicates a possibly applicable statute or one
of limited application described below.

STATE	Fingerprints/P.	Arrest Records	State I.D. Files	Court Record		Juv. Fgrprints.	Juv.Arrest Recs.	Juv. Ct. Recs.			Notify FBI/Other	BRIEF DESCRIPTION OF APPLICATION/LIMITATION OF STATUTES
North Dakota N.D. Cent. Code(1960)				O	[redacted]	X		X				12-53-18 Upon successful completion of probation, the offender may, at court's discretion, be released from all disabilities of his conviction. Thereafter access to court records is limited to identified court personnel and a court order is required for all others. 27-20-53 Fingerprints of children shall be destroyed if no petition alleging delinquency filed, proceedings dismissed, is not adjudicated delinquent, or if child reaches age 21 with no criminal offenses since age 16. Prints which do not compare with latent prints at scene of crime shall be destroyed. 27-20-54 Juvenile records may be destroyed at the discretion of the judge two(2) years after the final release of the juvenile.
Ohio Ohio Rev. Code Ann. (1969)	X	X			[redacted]	X	O	X				109.60(1970) If an individual arrested, other than a juvenile, is found not guilty, fingerprints and photos are to be returned upon request. 2151.313 No criminal information may be published or disseminated without a court order, except for arrests of suspected felonies, and criminal information is to be destroyed if no complaint is filed, or if the case is dismissed, or after a juvenile reaches age 21 if he has no criminal record since age 18. 2151.35.8 Juveniles, two(2) years after their release or the adjudication, may petition the court which may, in its discretion, expunge the record. 2151.31.3 Juvenile fingerprints will be ordered destroyed by a court where a complaint is not filed or dismissed following an investigation or a child turns 21 without committing a crime after 18.
Oklahoma Okla. Stat. Ann.(1962)					[redacted]							None located.

STATUTES EXPUNGING, SEALING, RETURNING "CRIMINAL" RECORDS

An "X" to left indicates presence of statute described below.
An "O" indicates a possibly applicable statute or one
of limited application described below.

STATE	Fingerprints/P.	Arrest Records	State I.D. Files	Court Record	Juv. Fgrprints.	Juv.Arrest Recs.	Juv. Ct. Recs.			Notify FBI/Other	BRIEF DESCRIPTION OF APPLICATION/LIMITATION OF STATUTES
Oregon Ore. Rev. Stats. (1969)											None located.
Pennsylvania Pa. Stat. Ann. (1964)	O										19 §1405(c) The fingerprints of all persons acquitted shall be destroyed.
Rhode Island R.I. Gen. Laws (1956)											12-1-12 The fingerprints of persons acquitted or otherwise exonerated shall, if the person was not previously convicted of an offense involving moral turpitude, be destroyed. Violation of this provision: maximum fine of $100.
South Carolina S.C. Code Ann. (1962)											None located.
South Dakota S.D. Comp. Laws (1967)											None located. NOTE: 26-8-19.7(1968) The taking of a child into temporary custody or detention is "not an arrest, nor does it constitute a police record."
Tennessee Tenn. Code Ann. (1964)					X						37-253(1970) Fingerprints of juveniles shall be destroyed if a delinquency petition is not ordered, or if the case is dismissed, or the child acquitted. Shall also be destroyed where convicted of an offense not a felony, if he were an adult, upon reaching age 21 if he has a clean record since age 16.
Texas Tex. Code. Crim. Proc. (1966)				O							42.12(B)(3) Probation may be granted following conviction or plea of guilty (where the maximum punishment does not exceed 10 years) if there has been no prior conviction of a felony. 42.12B(7) Upon satisfactory fulfillment of conditions and period of probation, court may set aside verdict or permit withdrawal of plea,

STATUTES EXPUNGING, SEALING, RETURNING "CRIMINAL" RECORDS

An "X" to left indicates presence of statute described below.
An "O" indicates a possibly applicable statute or one
of limited application described below.

STATE	Fingerprints/P.	Arrest Records	State I.D. Files	Court Record	Juv. Fgrprints.	Juv.Arrest Recs.	Juv. Ct. Recs.			Notify FBI/Other	BRIEF DESCRIPTION OF APPLICATION/LIMITATION OF STATUTES
Texas **Continued**											and shall dismiss the accusation, complaint, information, or indictment. Person thereafter shall be released from all penalties and disabilities resulting from the offense or crime except in future convictions. 42.13(7) Misdemeanor Probation Law: When the period and terms of probation are satisfactorily completed, the court shall, upon its own motion, discharge the person from probation and enter an order setting aside the finding of guilty and shall dismiss the accusation, complaint, information or indictment against the probationer. Afterwards, his finding of guilty may not be considered "for any purpose"[emphasis in statute] except in future probations. 42.13(3)(a)(1-5) Misdemeanor probation law applicable only to persons never before convicted of felony or serious misdemeanors.
Utah Utah Code Ann.(19)				O	O	O	X				77-35-17 Upon successful completion of terms and conditions of probation the court may, "if it be compatible with the public interest," terminate the sentence or set aside the plea of guilty or conviction and dismiss the action and discharge the defendant. NOTE: State Supreme Court interpreted statute as "enacted for the purpose of permitting the court under unusual circumstances and for good cause to expunge the record of crime." State v. Schreiber, 245 P.2d 22, 224(1952). 55-10-117(1965) Except where convictions for felony or misdemeanors involving moral turpitude have been committed after termination of jurisdiction, persons arrested as minors may petition the court for sealing of his record after one(1) year from the date terminating the court's jurisdiction and court will do so where it finds rehabilitation successful; all agencies must seal records; petitioner

STATUTES EXPUNGING, SEALING, RETURNING "CRIMINAL" RECORDS

An "X" to left indicates presence of statute described below.
An "O" indicates a possibly applicable statute or one of limited application described below.

STATE	Fingerprints/P.	Arrest Records	State I.D. Files	Court Record	Juv. Fgrprints.	Juv. Arrest Recs.	Juv. Ct. Recs.			Notify FBI/Other	BRIEF DESCRIPTION OF APPLICATION/LIMITATION OF STATUTES
Utah Continued											**may reply that no proceeding ever occurred and he is the only one who may subsequently see his record.** **55-10-118(1965) Juvenile records may be destroyed five years after the individual's 21st birthday but the court may choose to microfilm the records.**
Vermont Vt. Stat. Ann. (1959)					X		X				33 §664 Juvenile fingerprints shall be destroyed if child not found delinquent or when child reaches 18 with no offense since 16th birthday. Fingerprints which do not compare with latent prints at scene of crime shall be destroyed. 33 §665(1964) Juvenile records shall, upon petition to the court, or on the court's own motion, be sealed if (1) two years have elapsed since final discharge; (2)no subsequent convictions; (3) satisfactory rehabilitation; if sealed all agencies and the person will reply to inquiry that no record ever existed; thereafter only such person may inspect.
Virginia Va. Code. Ann. (1950)							X				16.1-193 Court records may, in the discretion of the judge, be destroyed when child reaches 21 or minor is 21 and five years have lapsed since disposal of proceedings or 10 years after a proceeding involving an adult is disposed of.
Washington Wash. Rev. Code Ann. (1961)	O	O		O			O				72.50.140 The criminal records of persons not convicted shall be held confidentially. 9.95.240 Persons successfully completing the terms and conditions of probation may petition the court which may, in its discretion, dismiss the information, and all penalties and disabilities shall be removed. NOTE: The [illegible] of a county sheriff [illegible] conviction had been annulled has been upheld. Matsen v. [illegible]ser, 443 P.2d 843(1968). 13.04.250(1967) Juvenile records shall be destroyed upon [illegible] reaching age 21 in the director of institution's discretion unless the juvenile was originally convicted of a felony or the director decides to preserve the record of a juvenile committed to [illegible] residential home.

STATUTES EXPUNGING, SEALING, RETURNING "CRIMINAL" RECORDS

An "X" to left indicates presence of statute described below.
An "O" indicates a possibly applicable statute or one
of limited application described below.

STATE	Fingerprints/P.	Arrest Records	State I.D. Files	Court Record		Juv. Fgrprints.	Juv.Arrest Recs.	Juv. Ct. Recs.			Notify FBI/Other	BRIEF DESCRIPTION OF APPLICATION/LIMITATION OF STATUTES
West Virginia W. Va. Code Ann. (1966)	X				[redacted]							15-2-29(h)(as amended 1969) If a person is acquitted and he has no previous criminal record, his fingerprints shall be returned upon his satisfactory proof of acquittal and his record. 15-2-29(4) Failure of duty to return fingerprints is fine of $25 to $200, up to 60 days in jail, or both.
Wisconsin Wis. Stat. Ann. (1958)					[redacted]							None located.
Wyoming Wyo. Stat. Ann. (1957)				O	[redacted]							7-315 Parole is available to all persons convicted, except those for murder, rape, and arson, who have no prior felony convictions. The judge may consider whether it is a first offense, the extent of moral turpitude involved, and the reputation of the defendant. Any time after the successful completion of the terms and conditions of parole, which may be as long as five years, the court "shall have the power in its discretion" to terminate parole, discharge the defendant, and "annul such verdict or plea of guilty."
District of Columbia D.C. Code (19)					[redacted]		X	X				16-2334 Petition required and relief reaches all records except fingerprint records if two years have elapsed with no subsequent criminal record. Proceedings treated as if they never occurred. "All facts relating to the action including arrest, the filing of a petition, and the adjudication, filing, and disposition of the Division shall no longer exist as a matter of law." Grantee and agencies given notice shall reply to any inquiry that "no record exists with respect to such person." Subject to nullification for any subsequent adjudication of delinquency, need for supervision, or conviction of a felony subsequent to sealing.

STATUTES EXPUNGING, SEALING, EXPURGING "CRIMINAL" RECORDS

An "X" to left indicates presence of statute described below.
An "O" indicates a possibly applicable statute or one of limited application described below.

STATE	Fingerprints/P.	Arrest Records	State I.D. Files	Court Record		Juv. Fgrprints.	Juv.Arrest Recs.	Juv. Ct. Recs.			Notify FBI/Other	BRIEF DESCRIPTION OF APPLICATION/LIMITATION OF STATUTES
Federal Youth Correction Act 18 U.S.C. 5001								X				**§5021 Persons designated youthful offenders, upon their unconditional release before the expiration of the maximum sentence imposed upon them, become** "automatically" entitled to having their conviction set aside and a certificate issued to them so stating. NOTE: Tatum v. U.S., 310 F.2d 854 (Cir. 1962)(". . . a person sentenced under the Youth Correction Act can, by virtue of his own good conduct, be spared the lifelong burden of a criminal record. ***It can . . . become a non-criminal episode so far as the public records are concerned." Id. at 856.) But see People v. Loomis, 42 Cal. Rptr. 124, 231 C.A.2d 594(1965) (setting aside of conviction takes effect as of the date of the order and is not retroactive to date of conviction).

APPENDIX H

Selected Characteristics of Certain Jurisdictions

Cities	(1960) Total pop. (1000's)	(1960) % non-white	(1962) % unem-ployed	(1960) Median school years	(1960) Median Income	(1962) Employ-ees in lcl.Govt.	(1950-1960) Pop. Growth %	(1968) Total Crime Index	SES Rank	SES Score
Phoenix Arizona	439	5.8	4.5	11.8	6117	4,223	311.1	3471.6	5	21
Cleveland Ohio	876	28.9	7.5	9.6	5935	13,349	-4.2	2250.9	9	9
Newark New Jersey	405	34.4	8.2	9.0	5454	13,850	-7.6	3520.0	11	5
Rochester New York	318	7.6	5.8	10.1	6361	7,232	-4.2	1754.0	6	18
San Francisco California	740	18.4	6.1	12.0	6717	16,657	-4.5	4666.3	3	23
Toledo Ohio	318	12.7	7.2	10.4	6299	3,793	4.7	1775.5	8	16
New Orleans Louisiana	627	37.4	5.5	9.0	4807	8,755	10.0	3398.8	9	9
Counties										
Hennepin, Minn.	842	1.4	3.6	12.2	6954	18,909	24.6	3137.7	1	31
Davidson - Nashville Tennessee	399	19.1	3.5	10.3	5332	9,996	24.2	3324.7	6	18
Bernallilo New Mexico	262	1.8	4.8	12.2	6252	5,796	80.0	3851.4	2	24
San Diego California	1,033	3.8	6.4	12.1	6545	27,957	85.5	2199.3	4	22
States										
Michigan	7,823	9.2		10.8	6256	46,058	22.8	2697.8		
North Carolina	4,556	24.5		8.9	3956	91,507	12.2	1345.7		
New Jersey	6,066	8.5		10.6	6786	150,751	25.5	2437.6		